TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 210.

[illegible] COUNTY OF BERRIEN,

vs.

[illegible] JOHN L. [illegible], EATON, AND THOMAS [illegible],

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN FOR THE COUNTY OF BERRIEN.

FILED [illegible] 4, 1869.

2.

SUPREME COURT OF THE UNITED STATES.

No. 441.

ELIZA C. DEERY'S LESSEE, PLAINTIFF IN ERROR,

vs.

MARTHA CRAY, THOMAS PALMER, JAMES GOODHAND, JOHN BRIGHT, HENRY C. LEGG, THOMAS TANNER, AND THOMAS LANE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the United States court-house at the city of Baltimore, on the first Monday of April (being the 6th day of the same month), in the year of our Lord one thousand eight hundred and sixty-eight—present, the Honorable William F. Giles, judge Maryland district; Andrew Sterett Ridgely, esquire, attorney; Washington Bonifant, esquire, marshal; James W. Chew, clerk—among other, were the following proceedings, to wit:

ELIZA C. DEERY'S LESSEE
vs.
MARTHA CRAY, THOMAS PALMER, JAMES GOODHAND, John Bright, Henry C. Legg, Thomas Tanner, Thomas Lane.

Be it remembered that heretofore, to wit, on the 30th day of March, in the year of our Lord one thousand eight hundred and sixty-seven, the said Eliza C. Deery, lessee as aforesaid, by Robert J. Brent, esquire, her attorney, filed in the circuit court here a mandate from the Supreme Court of the United States, in the words and of the tenor following, to wit:

"*Mandate.*"

2 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Maryland, greeting:

Whereas lately, in the circuit court of the United States for the district of Maryland, before you or some of you, in a cause between Eliza C. Deery's lessee, plaintiff, and Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, defendants, wherein the judgment of the said circuit court is in the following words, viz:

"It is considered by the court here that the said Richard Roe, lessee as aforesaid, take nothing by his said declaration, but that he go in mercy for his false complaint; and that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane go thereof without day, &c. It is also considered by the court here that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane do recover against the said plaintiff the sum of , for their costs and charges by them about their defence in this behalf sustained, according to the form of the statute in such case made and provided; and that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane have thereof their execution," as by the inspection of the transcript of the record of the said circuit court, which was brought into the
3 Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and sixty-six, the said cause came on

to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel; on consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed with costs; and that the said plaintiff recover against the said defendants, Martha Cray et al., , for his costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court, with directions to award a venire facia de novo—6 May. You, therefore, are hereby commanded that such execution and further proceeding be had in said cause, in conformity to the opinion and judgment of this court, as, according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-six.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

4 And now here, at this day, to wit, the first Monday of November, in the year of our Lord one thousand eight hundred and sixty-seven, comes into the circuit court the said Eliza C. Deery, lessee as aforesaid, by her attorney aforesaid, and the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, by Messrs. Wallis and Andrew Sterett Ridgely, esquire, their attorneys.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys, and by order of the court here thereon, is continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and sixty-eight, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

And now here, at this day, to wit, the 22d day of April, in the year of our Lord one thousand eight hundred and sixty-eight, the following agreement was filled in court here, to wit:

DEERY
vs.
CRAY ET AL.

It is agreed that the narr. be considered amended so as to count on a demise as of the date of the first of October, 1862.

R. J. BRENT, *for Pl'tff.*
WALLIS & THOMAS, *for Def'ts.*

5 Whereupon, for trying the issue aforesaid, it is ordered by the court here that twenty persons from the pannel of petit jurors, returned to the court here by the marshal of the Maryland district aforesaid, be drawn by ballot; and that the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, the remaining twelve persons, being called, come, to wit:

Oliver Wood, John B. Hays, John V. Wilkinson, William Collison,

Anthony Kimmell, Benjamin F. Keller, Henry C. Fritch, Walter A. Orme, Richard O. Crisp, John Shanklin, Edward K. Foreman, and Henry H. Bennett:

Who, being empannelled and sworn to say the truth in the premises, upon their oath do say that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane are not guilty of the trespass and ejectment aforesaid, as the aforesaid Eliza C. Deery hath above alleged.

Therefore it is considered by the court here that the said Eliza C. Deery, lessee as aforesaid, take nothing by her said declaration, but that she be in mercy for her false complaint; and that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane go thereof without day, &c. It is
6 also considered by the court here that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane do recover against the said plaintiff the sum of , for their costs and charges by them about their defence in this behalf sustained, according to the form of the statute in such case made and provided; and that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane have thereof their execution.

MEMORANDUM.—Before the jurors aforesaid withdrew from the bar of the court here, the Eliza C. Deery, by her attorney aforesaid, tendered to the court here the following bills of exception; which were by the court here signed and sealed, and which are in form following, to wit:

Plaintiff's 1st exception.

DEERY'S LESSEE
vs.
CRAY ET AL.

At the trial of this cause the plaintiff, to support the issues on her part, read in evidence—

1st. The patent of Kent Fort Manor, dated 7th Sept., 1640, made a part hereof.

2. Agreements of counsel filed among the papers in this cause, made a part hereof.

7 3. The special verdict found in the case of Brent vs. Tasker, reported in 3 Harris & McHenry's reports, made a part hereof.

4. The extract from debt book for Queen Anne's County, for the 1767, made a part here of.

5. The deed from the Brents to Samuel Chew, dated 28 May, 1785, made a part hereof.

6. The will of Samuel Chew, or Samuel L. Chew, made a part hereof.

7. Kinsey Harrison's deposition or statement, he being dead, which is made a part hereof.

The plaintiff then exhibited to the jury the plat mentioned in the said agreement & under the terms of the same.

(DEERY'S LESSEE
vs.
CRAY ET AL.
Circuit court U. S.

It is agreed in the above case that the clerk may dispense with copying any part of the former record, as it went up to the Supreme Court;

& the same, or any documentary testimony therein, may be read from said former record as printed in the Supreme Court.

BRENT & MULLEN, *for Pl'ff.*
S. T. WALLIS, *for Def'ts.*)

And further gave evidence, tending to show that the plaintiff's lessor was a granddaughter of Samuel L. Chew, the devisee in remainder aforesaid, & that said Samuel L. Chew, junior, died about the year 1796 or 1797, many years before the death of his mother, Elizabeth
8 Chew, the devisee for life in the will aforesaid, & that said Elizabeth Chew died & was burried at Sodus Point, in New York, many years ago—about 1807; that said Samuel L. Chew died, leaving four children, viz: Bennet, who died intestate, unmarried, & without issue; Samuel A. Chew, who died about 1842, leaving one child, named Lowman Chew, a lunatic, who was his sole heir at law, & who died intestate, unmarried, & without issue, in the month of August, 1862.

That the other two children of Samuel L. Chew, junior, were daughters; the one named Henrietta, who died about 1846, leaving two daughters & two sons, who still survive & are her sole heirs at law; & the other, named Eliza C., who married, prior to 1800, Mr. Deery, the father of the plaintiff, who died about the year 1799, & that the plaintiff was the sole issue of said marriage; that her said mother, being a widow, afterwards, about the year 1809, intermarried with Elie Beatty, & died about the year 1839, leaving one child of that marriage, named Edward, who died prior to July, 1862, leaving children, & said Eli Beatty died in 1859.

And thereupon the plaintiff rested, & the defendants thereupon read in evidence, subject to exceptions, a deed of mortgage from said Samuel L. Chew, jr., to Charles Carrol (made part hereof—see agreement); & then offered to read in evidence a deed from said Samuel L. Chew, junior, to Elizabeth Chew, made a part hereof, without producing the plot therein referred to, or showing it to be lost; but the plaintiff objected to the admissibility of said last deed, unless the plot made by W. Brown therein referred to is produced, or its lines shown; & the court overruled
9 said objection, & admitted the same to be read in evidence, subject to the right of the plaintiff to move to exclude the same hereafter, if upon the closing of the testimony it shall not have been legally & sufficiently applied by defendants to the maintenance of the issue on their part, and thereupon the plaintiff excepts, and this, her bill of exceptions, is signed, sealed, & enrolled this 27th April, 1868.

WILLIAM F. GILES. [SEAL.]

Plaintiff's 2nd exception.

After the evidence stated in the aforegoing exception, made a part hereof, the defendants read in evidence the release of Carroll to Elizabeth Chew.

QUEEN ANN'S COUNTY, *to wit:*

On the twenty-seventh day of June, seventeen hundred and ninety-seven, the following conveyance was brought to be recorded, as follows, to wit:

This indenture, made this twenty-seventh day of April, seventeen hundred and ninety-seven, between Charles Carroll of Carrollton, esquire, of the city of Annapolis, of the one part, and Elizabeth Chew, of Washington County, of the other part—witnesseth: That the said

Charles Carroll, for and in consideration of the sum of one thousand pounds, current money, the receipt whereof is hereby acknowledged, hath released, aliened, enfeoffed, and confirmed, and, by these presents, doth release, alien, enfeoff, and confirm, unto the said Elizabeth Chew, her heirs, and assigns, forever, one moiety or half part of all that tract or parcel of land called Kent Fort Manor—the said moiety or half part being the southermost extremity of Kent Island—together with all and singular the buildings, improvements, and appurtenances to the same moiety belonging or appertaining; it being the same moiety or half of Kent Fort Manor which was mortgaged to the said Charles Carroll by the said Elizabeth, as will appear by reference to a deed of indenture bearing date the twenty-seventh day of October, seventeen hundred and eighty-seven, and recorded among the land records of the Eastern Shore; the said Elizabeth to have and to hold the said moiety or half of Kent Fort Manor, with the appurtenances thereunto belonging to her, her heirs, and assigns, forever; and the said Charles Carroll, for himself and his heirs, the said lands, against himself and his heirs, and all persons claiming under him, to the said Elizabeth, her heirs, and assigns, will warrant and forever defend by these presents. In witness whereof, the said Charles Carroll has hereunto set his hand and affixed his seal the day and year first above written.

CH. CARROLL *of Carrollton.* [SEAL.]

Signed, sealed, and delivered in the presence of—
G. DUVALL.

On the back of the same conveyance was endorsed as follows, to wit: Maryland, set: On the day and year that the above instrument of writing was executed, came Charles Carroll of Carrollton, esquire, before me, one of the judges of the general court of the State of Maryland, and acknowledged the same to be his act and deed, to and for the uses and purposes therein mentioned, and according to the form of the act of assembly in such cases made and provided.

G. DUVALL.

STATE OF MARYLAND, *Queen Anne's County, to wit:*

I hereby certify that the aforegoing is truly taken and copied from Liber S. T. W., No. 4., folio 228, one of the land records of Queen Anne's County.

In testimony whereof, I hereto subscribe my name, and the seal of the circuit court for Queen Anne's County affix, this 26th day of March, 1864.

{ SEAL'S PLACE. }

SAMUEL E. DYOTT, *Clerk.*

[U. S. 5-cent stamp.]

Then offered to read in evidence a certified copy of a deed purporting to be from Elizabeth Chew to Thos. M. Foreman.

Thomas M. Foreman from Elizabeth Chew.

Be it remembered that on the 12th day of August, 1796, the following deed and endorsement thereon were received to be recorded among the records of the general court for the Eastern Shore of Maryland, and that the same were accordingly recorded on the same day, as follows:

This indenture, made this twenty-fifth day of March, in the year of our Lord one thousand seven hundred and ninety-six, between Elizabeth

Chew, of Washington County, and State of Maryland, on the one part, and Thomas Marsh Foreman, of Cecil County, and State aforesaid, of the other part, witnesseth: That for and in consideration of the sum of seventeen hundred and fifty pounds, current money of Maryland, to the said Elizabeth in hand paid by the said Thomas at or before the sealing and delivery of these presents—the receipt whereof she hereby
12 acknowledges, and thereof doth release, acquit, and discharge the said Thomas, his executors, and administrators, by these presents—she, the said Elizabeth, hath granted, bargained, and sold, and, by these presents, doth grant, bargain, and sell, unto the said Thomas and his heirs, all that moiety of a tract of land, called Kent Fort Manor, which forms the southern extremity of Kent Island, in Queen Ann's County, in the State aforesaid; which said moiety the said Elizabeth purchased of her son Samuel L. Chew, devisee of Samuel Chew, late of Queen Ann's County aforesaid, deceased; and all houses, buildings, orchards, ways, waters, water-courses, profits, commodities, hereditaments, and appurtenances whatsoever, to the said premises hereby granted or any part thereof belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, use, trust, property, and demand whatsoever of her, the said Elizabeth, of, in, and to the said premises; and all deeds, evidences, and writings, touching or in any wise concerning the same, to have and to hold the said tract of land hereby conveyed, and all and singular the premises hereby granted, and every part and parcel thereof, with their and every of their appurtenances unto the said Thomas, his heirs, and assigns, forever, to the only proper use and behoof of him, the said Thomas, and of his heirs, and assigns, forever. And the said Elizabeth for herself, her heirs, executors, and administrators, doth covenant, promise, and grant to & with him, the said Thomas, his heirs, and assigns, by these presents, that she, the said Elizabeth, now at the time of sealing and delivering of these presents, is
13 seized of a good, sure, perfect, and indefeisable estate of inheritance in fee simple of and in the premises hereby granted; and that she hath good power and lawful and absolute authority to grant and convey the same to the said Thomas in manner and form aforesaid; and that the said premises now are, and so forever hereafter shall remain and be, free and clear of and from all former and other gifts, grants, bargains, sales, judgments, executions, titles, troubles, charges, and incumbrances whatsoever, made, done, committed, or suffered by the said Elizabeth, or any other person or persons whatsoever. And the said Elizabeth, for herself, her heirs, executors, and administrators, doth further covenant, promise, and—to and with him, the said Thomas, his heirs, and assigns, by these presents, that she, the said Elizabeth, her heirs, executors, or administrators, shall and will from time to time, and at all times hereafter upon the reasonable request of him, the said Thomas, his heirs, or assigns, and at the proper cost, costs, and charges of him, the said Thomas, his heirs, or assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable act and acts, conveyance and conveyances, in law whatsoever, for the further and better assuring and conveying the aforesaid tract of land, with the appurtenances aforesaid, unto the said Thomas, his heirs, and assigns, as by the said Thomas, his heirs, or assigns, or his or their counsel learned in the law, shall be reasonably devised or required; and lastly, that the said Elizabeth and her heirs, all and singular
14 the premises hereby granted and conveyed, with the appurtenances, unto the said Thomas, his heirs, and assigns, against her, the said

Elizabeth, and her heirs, and assigns, and against all and every person and persons whatsoever, shall and will warrant and forever defend by these presents. In witness whereof, the said Elizabeth Chew hath hereunto set her hand and seal the day and year above written.

ELIZ. CHEW. [SEAL.]

Signed, sealed, and delivered in presence of—
BEN. GALLOWAY.
M. VAN LEAR.

Received, March 25th, 1796, of Thomas Marsh Forman, seventeen hundred and fifty pounds; being in full of the consideration in the foregoing conveyance.

£1,750 0 0 ELIZ'TH CHEW.
M. VAN LEAR.
WM. GOOD.

WASHINGTON COUNTY, *to wit:*

On the 25th day of March, in the year of our Lord one thousand seven hundred and ninety-six, the within-named Elizabeth Chew personally appeared before us, the subscribers, two of the justices of the peace for the county aforesaid, and acknowledged the within instrument of writing to be her proper act and deed; and the lands and tenements therein mentioned to be the estate of the within-named Thomas Marsh Forman, as by the said deed intended to be conveyed, according to the form and effect of the said deed.

15 Acknowledged before us.

M. VAN LEAR.
WM. GOOD.

MARYLAND, WASHINGTON COUNTY, *set:*

I hereby certify that Matthew Van Lear and William Good, gentlemen, before whom the within acknowledgment appears to have been taken, and who have thereto subscribed their names, were, at the time of doing the same, and still are, two justices of the peace in and for the county aforesaid, duly commissioned and qualified, and to all such certificates by them given, due faith and credit is and ought to be given as well in courts of justice as thereout.

{ SEAL'S PLACE. } In testimony whereof, I have hereunto set my hand and affixed the publick seal of my office this 28th day of March, anno Domini seventeen hundred and ninety-six.

ELIE WILLIAMS,
Clk of Washington County Court.

MARYLAND, *set:*

I, George Earle, clerk of the court of appeals of the State of Maryland, do hereby certify that the aforegoing is a full and true copy of, taken from Liber J. E., No. B, folios 410, &c., one of the land records of the late general court of the State of Maryland, deposited in and belonging to the court of appeals of said State.

{ SEAL'S PLACE. } In testimony whereof, I have hereunto set my hand and affixed the seal of the said court of appeals this 30th day of March, 1864.

16 GEORGE EARLE,
Clerk of the Court of Appeals of Md.

[U. S. 5-cents stamp.]

But the plaintiff objected to said deed because of the uncertainty of description, given in said deed to the property conveyed, & because the same was acknowledged before two justices of the peace of Washington County, & recorded in the general court, and because the clerk's certificate was defective; & the court overruled said objection & admitted said deed, & thereupon the plaintiff excepts, & this his bill of objections is signed, sealed, and enrolled, this 27th day of April, 1868.

WILLIAM F. GILES. [SEAL.]

Plaintiff's 3rd exception.

DEERY'S LESSEE
vs.
CRAY ET AL.

And thereupon, & after the evidence was given as set forth in the preceding bill of exceptions, made part hereof, the defendants offered in evidence the deeds following (subject to exception), namely:

Charles Carroll to Samuel Ll. Chew.

This indenture made this fifteenth day of March, in the year seventeen hundred and ninety-four, between Charles Carroll of Carrollton, of the city of Annapolis, of the one part, & Samuel Lloyd Chew, of Anne Arundel County, of the other part. Whereas the said Samuel
17 Lloyd Chew did heretofore, on the twenty-eighth day of October, in the year seventeen hundred and eighty-six, mortgage sundry tracts or parts of tracts & parcels of land unto the said Charles Carroll to secure the payment of seven thousand pounds, current money, and interest thereon; and whereas the said Samuel Lloyd Chew hath conveyed part of the said mortgaged premises to Elizabeth Chew, being part of "Kent Fort Manor," lying on Kent Island, in Queen Ann's County, who assumed the payment of three thousand five hundred pounds, part of the said debt, and, by her deed, bearing date on or about the twenty-second day of October, seventeen hundred and eighty-seven, did mortgage the same part of "Kent Fort Manor" unto the said Charles Carroll; and whereas the said Samuel Lloyd Chew hath, by her deed, bearing even date with these presents, conveyed other parts of the said mortgaged premises lying in Anne Arundel County, called "Chew's Right," and a part of the land called "Ayres," supposed to contain twelve hundred and fifty acres, unto Philemon Lloyd Chew, as by reference to the said several conveyances will more fully appear; and the said Philemon Lloyd Chew having assumed payment of the residue of the said debt and interest due from the said Samuel Lloyd Chew to the said Charles Carroll. This indenture therefore witnesseth, that the said Charles Carroll, for and in consideration of the premises and of the sum of five shillings, current money, to him in hand paid by the said Samuel Lloyd Chew at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said
18 Charles Carroll, doth release, acquit, exonerate, and discharge the said Samuel Lloyd Chew of and from the said debt mentioned in the deed of mortgage from the said Samuel Lloyd Chew to the said Charles Carroll, and hath released, acquitted, and discharged, and, by these presents, doth release, exonerate, acquit, and discharge, all and every the lands, tenements, and hereditaments mentioned in the said deed of mortgage made by the said Samuel Chew unto him, the said Samuel Chew, his heirs, and assigns, of and from the payment of the

said debt therein mentioned, and every part thereof, except such parts of the said premises so mortgaged that hath since been conveyed to the said Elizabeth Chew, or mortgaged by her to the said Charles Carroll, and such part of the said premises that hath been sold & conveyed by the said Samuel Lloyd Chew unto the said Philemon Lloyd Chew as hereinbefore recited, the said parts of the said premises so conveyed or sold by the said Samuel Chew to Elizabeth Chew and Philemon Lloyd Chew, being held still responsible for the payment of the claim of the said Charles Carroll, anything herein contained to the contrary notwithstanding. In witness whereof, the said parties have hereunto set their hands & seals the day and year first herein written.

CHARLES CARROLL *of Carrolton.* [SEAL.]

Signed, sealed, & delivered in the presence of—
JAMES MACKUBIN.
JOHN RANDALL.

On this 15th day of March, 1794, came Charles Carroll before us, two of the justices of Anne Arundel County, and acknowledged the aforegoing instrument of writing to be his act and deed to and for the uses and purposes therein mentioned, & agreeably to the act of assembly in such cases made & provided.

19 JAMES MACKUBIN.
JOHN RANDALL.

Recorded 15th March, 1794.

STATE OF MARYLAND, *Anne Arundel County, to wit:*

I hereby certify that the aforegoing is a true copy taken from Liber N. H., No. 7, folio 97, &c., one of the land-record books of Anne Arundel County.

[U. S. 5-cent stamp.]

{ SEAL'S } { PLACE. } In testimony whereof, I hereto set my name and affix the seal of the circuit court for Anne Arundel County this twenty-sixth day of March, eighteen hundred and sixty-four.

N. H. GREEN, *Clk.*

QUEEN ANNE'S COUNTY, *to wit:*

On the nineteenth day of April, seventeen hundred and ninety-eight, the following deed was brought to be recorded as follows, to wit:

This indenture, made this nineteenth day of January, in the year of our Lord one thousand seven hundred and ninety-eight, between Thomas Marsh Forman, of Cecil County, in the State of Maryland, gentleman, of the one part, and Philip Barton Key, of the city of Annapolis, attorney at law, of the other part, witnesseth: That the said Thomas Marsh Forman, for and in consideration of five thousand dollars to him in hand paid by the said Philip Barton Key, at or before the ensealing and [and] delivery of these presents, the receipt whereof is hereby acknowledge, hath given, granted, bargained, sold, aliened, enfeoffed, and confirmed, and, by these presents, doth give, grant, bargain, sell, alien, enfeoff, and confirm, unto the said Philip Barton Key, his heirs, and
20 assigns, forever, all that moiety or half part of Kent Fort Manor, lying on Kent Island, in Queen Anne's County, being the lower half part or moiety of Kent Fort Manor, and is the land of which Mrs. Chew was heretofore seized in fee simple, supposed to contain eleven hundred

acres of land, clear of all incumbrances, more or less, with all the improvements, benefits, and advantages thereto belonging or appertaining, to have and to hold the said land and premises, with all and singular the improvements, conveniences, and advantages to the said land belonging or in manner of way appertaining, to the only proper use and behoof of him, the said Philip Barton Key, his heirs, and assigns, forever, and to no other use, intent, or purpose whatsoever. And the said Thomas Marsh Forman doth covenant and agree to and with the said Philip Barton Key, that he, the said Thomas Marsh Forman and his heirs, shall and will at all times hereafter well and truly warrant and defend the said tract and parcel of land and premises and appurtenances aforesaid unto the said Philip Barton Key and his heirs and assigns, from and against all and every person or persons whatsoever; and, also, that he, the said Thomas Marsh Forman and his heirs, shall and will at all times hereafter, on the reasonable request and at the cost and charges of the said Philip Barton Key, his heirs, or assigns, make, do, suffer, and execute, and cause to be made, done, suffered, and executed, all such further and other act, acts, deed, deeds, assurance, assurances, conveyances, and other matters, as by the said Philip Barton Key, his heirs, or assigns, or his or their council learned in the law, shall be reasonably devised,
21 advised, or required for the further and better assuring and confirming unto the said Philip Barton Key, or his heirs or assigns, a good, sure, indefeasible estate of inheritance in fee simple, in and to the said tract or parcel of land and premises aforesaid. In witness whereof, the said Thomas Marsh Forman hath hereunto set his hand and affixed his seal the day and year above mentioned.

T. M. FORMAN. [SEAL.]

Signed, sealed, and delivered in the presence—
WILLIAM WARD.
LAMB'T BEARD.

On the back of the same deed was endorsed as follows, to wit:

On the day of the date of the above deed received of Philip Barton Key the sum of five thousand dollars, it being the consideration within expressed.

T. M. FORMAN.

Witness: WILLIAM WARD.
LAMB'T BEARD.

On the back of the same deed was further endorsed as follows, to wit: State of Maryland, Cecil County, to wit: On the nineteenth day of January, seventeen hundred and ninety-eight, came before us, the subscribers, two of the justices for the said county, Thomas Marsh Forman, party to the above instrument, and acknowledged the same to be his act and deed to and for the purposes therein mentioned, and the land and premises therein mentioned to be conveyed to the said Philip Barton Key, according to the true intent and meaning thereof, and to the act of assembly in such case made and provided.

WILLIAM WARD.
LAMBERT BEARD.

On the back of the same deed was also further endorsed as fol-
22 lows, to wit: Maryland, Cecil County, to wit: I hereby certify that William Ward and Lambert Beard, esquires, before whom the within acknowledgment appears to have been made, and whose signatures are thereto subscribed, were, at the time of taking and signing the same,

and still are, two of the justices of the peace in and for the county aforesaid, legally commissioned, authorized, assigned, sworn, and so forth, and to all acts by them done as such, due faith and credit is and ought to be given as well in courts of justice as thereout.

In testimony whereof, I have hereunto set my hand and affixed [SEAL.] the seal of my office this tenth day of February, anno Domini seventeen hundred and ninety-seven.

JO. BAXTER, *C'k C'il Co'ty.*

STATE OF MARYLAND, *Queen Anne's County, to wit:*

I hereby certify that the aforegoing is truly taken and copied from Liber S. T. W., No. 4, folios 406 and 407, one of the land records of Queen Anne's County.

In testimony whereof, I hereto subscribe my name, and the [SEAL.] seal of the circuit court for Queen Anne's County affix, this 29 day of March, 1864.

SAMUEL E. DYOTT, *Clerk.*

[U. S. 5-cent rev. stamp.]

QUEEN ANN'S COUNTY, *to wit:*

On the seventh day of May, seventeen hundred and ninety-eight, the following deed was brought to be recorded as follows, to wit:

This indenture, made this seventeenth day of March, in the year of our Lord one thousand seven hundred and ninety-eight,
23 between Philip Barton Key, of the city of Annapolis, of the one part, and Arthur Bryan, of Talbot County, of the other part, witnesseth: That for and in consideration of the sum of seventeen hundred and fifty pounds, current money, to the said Philip in hand paid by the said Arthur, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said Philip Barton Key, hath given, granted, bargained, and sold, and, by these presents, doth give, grant, bargain, and sell, to the said Arthur Bryan, his heirs, and assigns, all that moiety or half part of Kent Fort Manor, on Kent Island, in Queen Ann's County, being the lowermost half part of the said tract of land, called Kent Fort Manor, and is the same land and half part of which Mrs. Chew was heretofore seised, supposed to contain eleven hundred acres, more or less, with all the buildings, houses, improvements, benefits, and advantages thereon situate or thereto belonging, to have and to hold the said moiety or half part of the said tract of land called Kent Fort Manor, with all its buildings, improvements, benefits, and advantages, to the said Arthur Bryan, his heirs, and assigns, forever. And the said Philip Barton Key, for himself and his heirs, the said lower moiety or half part of Kent Fort Manor, on Kent Island, in Queen Ann's County aforesaid, with its appurtenances, to the said Arthur Bryan, his heirs, and assigns, doth hereby warrant and defend against all and every person or persons whatsoever. In witness whereof, the said Philip Barton Key hath hereto set his hand and seal the day and year aforesaid.

PHILIP BARTON KEY. [SEAL.]

Signed, sealed, and delivered in presence of—
JEREMIAH TOWNLEY CHASE.

24 On the back of the same deed was endorsed as follows, to wit:

March 7th, 798. Received of Arthur Bryan the sum of one thousand seven hundred and fifty pounds, current money, in full of the consideration for the within conveyance.

PHILIP B. KEY. [SEAL.]

Witness: JEREMIAH TOWNLEY CHASE.

On the back of the same deed was further endorsed as follows, to wit:

STATE OF MARYLAND, *to wit:*

On the seventeenth day of March, seventeen hundred and ninety-eight, the within-mentioned Philip Barton Key came before me, the subscriber, one of the judges of the general court, and acknowledged the within instrument of writing to be his act and deed, and the land and premises therein mentioned to be the right, title, and estate of the within-named Arthur Bryan, his heirs, and assigns; and at the same time came Ann Key, wife of the said Philip Barton Key, and acknowledged and released her right of dower in and to the premisses, and, being by me privately examined apart from and out of the presence and hearing of her said husband, declared she made the same voluntarily and freely of her own accord, without being induced thereto by threats or fear of incurring her husband's displeasure.

Acknowledged before

JEREMIAH TOWNLEY CHASE.

STATE OF MARYLAND, *Queen Anne's County, to wit:*

I hereby certify that the aforegoing is truly taken and copied from Liber S. T. W., No. 4, folios 410 and 411, one of the land records of Queen Anne's County.

{ SEAL'S } { PLACE. } In testimony whereof, I hereunto subscribe my name, and the seal of the circuit court for Queen Anne's County affix, this 29th day of March, 1864.

SAMUEL E. DYOTT, *Clerk.*

[U. S. 5-ct. stamp.]

25 QUEEN ANN'S COUNTY, *to wit:*

Be it remembered that on the ninth day of April, eighteen hundred and twenty-two, the following deed was brought to be recorded, to wit:

This indenture, made this twenty-sixth day of October, one thousand eight hundred and twenty-one, between Elie Beatty and Elizabeth C. Beatty, his wife, and Henry C. Schnebly and Henrietta Maria Schnebly, his wife, of Washington County, and State of Maryland, of the one part, and Samuel A. Chew, of the same county and State, of the other part, witnesseth: That the said Elie Beatty and Elizabeth, his wife, and Henry C. Schnebly and Henrietta Maria, his wife, for and in consideration of the sum of two thousand dollars, current money, to them in hand paid by the said Samuel A. Chew, before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and do hereby grant, bargain, sell, alien, and enfeoff, unto the said Samuel A. Chew, his heirs, and assigns, all the right, title, interest, and estate, both in law and equity, of the said Elie Battie and Elizabeth, his wife, and the said Henry C. Schnebly and Henrietta Maria, his wife, of, in, and to all that tract or parcel of land situate in Queen Ann's County, on the eastern shore of Maryland, lying about Kent Fort, in the Isle of Kent, bounding upon the west, east, and south by the Chesapeake Bay, and on the north by a line drawn through the woods straight east from the northeasternmost branch of the creek called Northwest Creek, into a swamp in the bay on the east side of said creek, containing about two thousand acres of land, patented to a certain Giles Brent, by patent
26 bearing date the seventh day of September, one thous- six hundred and forty, together with the appurtenances, improvements, rights, privileges, and advantages thereto in any wise belonging, to have and to hold unto him, the said Samuel A. Chew, his heirs, and

assigns, forever, all the right, title, interest, and estate of the aforesaid Elie Beatty and Elizabeth, his wife, and Henry C. Schnebly and Henrietta Maria, his wife, of, in, and unto the aforesaid land, premises, and appurtenances; and the said Elie Beatty and Elizabeth, his wife, and Henry C. Schnebly and Henrietta Maria, his wife, for themselves, their heirs, executors, and administrators, do hereby covenant, grant, promise, and agree to and with the aforesaid Samuel A. Chew, his heirs, and assigns, that they, the said Elie Beatty and Elizabeth, his wife, and Henry C. Schnebly and Henrietta Maria, his wife, and their heirs, the aforesaid tract of land and premises to him, the said Samuel A. Chew, his heirs, and assigns, against them and their heirs, shall and will forever warrant & defend by these presents. In testimony whereof, the said Elie Beatty & Elizabeth, his wife, and Henry C. Schnebly & Henrietta Maria, his wife, have hereto set their hands & seals the day and year first hereinbefore written; the word "branch" on the first page interlined before signing.

ELIE BEATTY. [SEAL.]
ELIZABETH C. BEATTY. [SEAL.]
HENRY C. SCHNEBLY. [SEAL.]
HENRIETTA M. SCHNEBLY. [SEAL.]

Signed, sealed, and delivered in the presence of—
STEWART HERBERT.
BENJAMINE YOE.

On the back of the original deed was thus endorsed, to wit:

STATE OF MARYLAND, *to wit:*

Be it remembered that on this twenty-sixth day of October, one thousand eight hundred and twenty-one, personally appeared before us,
27 two justices of the peace of the State of Maryland for Washington County, the above-named Elie Beatty and Elizabeth, his wife, and Henry C. Schnebly and Henrietta Maria, his wife, party grantors in the foregoing instrument of writing, and severally acknowledged the same to be their and each of their act and deed, and the lands and premises, interests and estate, thereby bargained and sold to be the right and estate of Samuel A. Chew therein named grantee, his heirs, and assigns, forever. And the said Elizabeth C. Beatty, wife of Elie Beatty, and Henrietta Maria Schnebly, wife of Henry C. Schnebly, being by us, two justices of the peace aforesaid, respectively, privately examined apart from and out of the hearing of their and each of their husbands, whether they and each of them doth make their acknowledgment of the said instrument of writing willingly and freely, and without being induced thereto by fear or threats by, or ill-usage of, their or either of their aforesaid husbands, or for fear of the displeasure of their or either of their said husbands, severally say that they and each of them doth make acknowledgment of the same without being induced thereto by fear or threats by, or ill-usage of, their respective husbands, or for fear of the displeasure of their husband aforesaid, and that they severally acknowledge the same willingly and freely.

Taken and certified before us.

STEWART HERBERT.
BENJAMINE YOE.

STATE OF MARYLAND, *Washington County, sc:*

I hereby certify that Stewart Herbert and Benjamine Yoe, gentleman, whose names are signed to the above acknowledgment, were, at
28 [at] the time of signing thereof, and still are, justices of the peace

for the county aforesaid, duly commissioned and qualified, and to all his acts as such full faith and credit is and ought to be given as well in courts of justice as thereout.

{ SEAL OF WASHING'N COUNTY COURT. } In testimony whereof, I have hereto subscribed my name and affixed the seal of my office this twenty-sixth day of March, eighteen hundred and twenty-two.

O. H. WILLIAMS,
Clk W'n Co'ty Court, Maryland.

STATE OF MARYLAND, *Queen Anne's County, to wit:*

I hereby certify that the above and foregoing is truly taken and copied from Liber T. M., No. 2, folios 488 and 489, one of the land records of Queen Anne's County.

{ SEAL'S PLACE. } In testimony whereof, I hereto subscribe my name, and the seal of the circuit court for Queen Anne's County affix, this 12th day of March, 1864.

SAMUEL E. DYOTT, *Clerk.*

[U. S. 5-cts. stamp.]

QUEEN ANN'S COUNTY, *to wit:*

Be it remembered that on the tewenty-eighth day of March, eighteen hundred and tewenty-nine, the following deed was brought to be recorded, to wit:

This indenture, made this tenth day of December, in the year of our Lord eighteen hundred and twenty-eight, between Elie Beatty and Elizabeth C. Beatty, his wife, and Henry C. Schnebly and Henrietta Maria, his wife, all of Washington County, and State of Maryland, of the one part, and Samuel A. Chew, of Queen Ann's County, and State
29 aforesaid, of the other part, witnesseth: That the said Elie Beatty and Elizabeth C., his wife, and Henry C. Schnebly and Henrietta Maria, his wife, for and in consideration of the sum of five dollars, current money, to them in hand paid by the said Samuel A. Chew, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and confirmed, and, by these presents, do grant, bargain, sell, release, and confirm, unto the said Samuel A. Chew, and his heirs, and assigns, forever, all their undivided interest in a certain farm or parcel of land situate on Kent Island, in Queen Ann's County, known and distinguished as "Long Point farm," lying on the east side of Kent Fort Manor, and only seperated from the same by a creek called Long Creek, together with all the rights, privileges, and appurtenances whatsoever thereunto belonging, to have and to hold the said farm or parcel of land called Long Point farm unto him, the said Samuel A. Chew, and his heirs, and assigns, forever, to the only proper use and behoof of him, the said Samuel A. Chew, his heirs, and assigns, forever, and to and for no other use, intent, or purpose whatsoever. In witness whereof, the said Elie Beatty and Elizabeth C. Beatty, his wife, and Henry C. Schnebly and Henrietta Maria, his wife, have hereunto subscribed their names and affixed their seals the day and year hereinbefore written.

ELIE BEATTY. [SEAL.]
ELIZA. C. BEATTY. [SEAL.]
HENRY C. SCHNEBLY. [SEAL.]
H. M. SCHNEBLY. [SEAL.]

Signed, sealed, and delivered in the presence of—
JACOB SCHNEBLY.
STEWART HERBERT.

30 WASHINGTON COUNTY, *set:*

Be it remembered that on this tenth day of December, in the year of our Lord one thousand eight hundred and twenty-eight, personally appear Elie Beatty and Elizabeth C. Beatty, his wife, and Henry C. Schnebly and Henrietta Maria, his wife, the grantors within named, before us, the subscribers, two justices of the peace of the State of Maryland, in and for the county aforesaid, and acknowledge the within deed or instrument of writing to be their act and deed, and the land and premises therein mentioned and thereby bargained and sold to be the right and estate of the within-named Samuel A. Chew, his heirs, and assigns, forever, according to the purport, true intent, and meaning of the said deed or instrument of writing, and the acts of assembly in such case made and provided. And the said Elizabeth C. Beatty and Henrietta Maria Schnebly, being severally by us privately examined apart from and out of the hearing of their respective husbands, whether she doth make her acknowledgment of the same willingly and freely, and without being induced thereto by fear or threats of, or ill-usage by, her husband, or fear of his displeasure, doth each of them severally acknowledge and declare that she doth make her acknowledgment of the same willingly and freely, and without being induced thereto by fear or threats of, or ill-usage by, her husband, or fear of his displeasure.

Taken and certified by

JACOB SCHNEBLY.
STEWART HERBERT.

MARYLAND, *Washington County, to wit:*

I hereby certify that Jacob Schnebly and Stewart Herbert, gentlemen, before whom the aforegoing deed was acknowledged, are justices of the peace of the State of Maryland in and for the county aforesaid,
31 duly commissioned and qualified, and to all their acts as such full faith and credit is due as well in courts of justice as thereout.

In testimony whereof, I hereunto subscribe my name and
[SEAL.] affix the seal of my office this tenth day of December, in the year of our Lord one thousand eight hundred and twenty-eight.

OTHO H. WILLIAMS,
Clk Wash. Co. C't.

STATE OF MARYLAND, *Queen Anne's County, to wit:*

I hereby certify that the aforegoing is truly taken and copied from Liber T. M., No. 5, folios 77 and 78, one of the land-record books of Queen Anne's County.

In testimony whereof, I hereto subscribe my name, and the
{ SEAL'S } seal of the circuit court for Queen Anne's County affix,
{ PLACE. } this 10th day of March, 1864.

SAMUEL E. DYOTT, *Clerk.*

[U. S. 5-cts. stamp.]

QUEEN ANN'S COUNTY, *to wit:*

Be it remembered that on the eighth day of March, eighteen hundred and thirty, the following deed was brought to be recorded, to wit:

This indenture, made this sixth day of March, in the year of our Lord one thousand eight hundred and thirty, between Samuel A. Chew, of Queen Ann's County, in the State of Maryland, of the one part, and Thomas Murphey, of the same county and State, of the other part, witnesseth: That the said Samuel A. Chew, for and in consideration of the

sum of four thousand dollars, current money of the United States,
32 to him in hand paid by the said Thomas Murphey, at or before the ensealing and delivery of these presents, the receipt whereof the said Samuel A. Chew doth hereby acknowledge, and from every part and parcel thereof doth hereby acquit, exonerate, and discharge the said Thomas Murphey, his heirs, executors, and administrators, he, the said Samuel A. Chew, hath granted, bargained, sold, aliened, released, enfeoffed, and confirmed, and, by these presents, doth grant, bargain, sell, alien, release, enfeoff, and confirm, unto the said Thomas Murphey, his heirs, and assigns, forever, all that tract, part of a tract or parcel of land situate, lying, and being on Kent Island, in Queen Ann's County aforesaid, called "Kent Fort Manor," commonly known and distinguished as Long Point farm, and which is contained within the following lines, metes, and boundaries, that is to say: Beginning at a cedar post planted in the head of Long Creek, and thence running with the original line of the manor land north eighty-nine degrees east one hundred and sixty-two perches to the Eastern Bay, thence down by and with said bay south twenty-one degrees east thirty perches, then south thirty-nine degrees east forty perches, then south twenty-three degrees east twenty-six perches, then south fourteen degrees east forty-four perches, then south eleven degrees east thirty-four perches, then south four degrees west eight perches, then south twelve degrees west thirty-two perches, then south twenty degrees west twelve perches, then south thirty degrees west twenty-four perches, then south thirty-six degrees west one hundred perches, then south thirty degrees west eighty perches, then south twenty-two degrees west fifty-four perches, then south eighty-four degrees west eighteen perches, then north seventy-eight degrees west forty-six perches to the middle of Long Creek aforesaid, and
33 thence by and with the centre of said creek north five degrees west one hundred and five perches, then north twelve degrees fifteen minutes west one hundred and ten perches, and from thence with a straight line to the first place of beginning, containing four hundred and sixty-one acres and one-fourth of an acre of land, more or less, together with all and singular the buildings, improvements, woods, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, and interest whatsoever of him, the said Samuel A. Chew, both at law and in equity of, in, to, and out of the said tract, part of a tract or parcel of land, and premises hereby bargained and sold, or meant, mentioned, or intended hereby so to be, and every part and parcel thereof, with the appurtenances, to have and to hold the said tract, part of a tract, or parcel of land so as aforesaid described, called "Kent Fort Manor," or by whatsoever name or names the same may be called, together with the buildings and appurtenances thereunto belonging, unto the said Thomas Murphey, his heirs, and assigns, to the only proper use and behoof of him, the said Thomas Murphey, his heirs, and assigns, forever, and to and for no other use, interest, or purpose whatsoever. And the said Samuel A. Chew, for himself, his heirs, executors, and administrators, doth hereby covenant, grant, promise, and agree to and with the said Thomas Murphey, his heirs, executors, and administrators, that he, the said
34 Samuel A. Chew, and his heirs, the said tract, part of a tract, or parcel of land and premises hereby granted, bargained, and sold, and every part and parcel thereof, with the appurtenances thereunto belonging, to him, the said Thomas Murphey, his heirs, and assigns,

against him, the said Samuel A. Chew, and his heirs, and against all and every person or persons whatsoever claiming or to claim any right, title, or interest in and to the same or any part thereof, shall and will hereafter warrant and forever defend by these presents. And the said Samuel A. Chew, for himself, his heirs, executors, and administrators, doth further covenant, grant, promise, and agree to and with the said Thomas Murphey, his heirs, executors, administrators, and assigns, that he, the said Samuel A. Chew, and his heirs, shall and will at all times hereafter, whenever required thereto by the said Thomas Murphey, his heirs, or assigns, at the proper costs and expence of the said Thomas Murphey, his heirs, or assigns, make, do execute, and acknowledge all and every such further assureance or assureances, deed or deeds, conveyance or conveyances, devise or devises in the law, as he, the said Thomas Murphey, his heirs, or assigns, or his or their counsel learned in the law, may or shall advise, devise, or require for the more certain and effectual assuring, conveying, and quieting the possession of the said Thomas Murphey, his heirs, and assigns, of, in, and to the said tract, part of a tract, or parcel of land and premises, withe the appurtenances forever. In witness whereof, the said Samuel A. Chew hath hereto subscribed his name and affixed his seal the day and year first herein-
before written.
35

SAM'L A. CHEW. [SEAL.]

Signed, sealed, and delivered in the presence of—
ISAAC WINCHESTER.
HENRY E. GIBSON.

Received, on the day of the date of the aforegoing deed of and from the within-named Thomas Murphey, the sum of four thousand dollars, current money of the United States, being the consideration money mentioned in the said deed.

SAM'L A. CHEW. [SEAL.]

Witness: ISAAC WINCHESTER.
HENRY E. GIBSON.

QUEEN ANN'S COUNTY, TO WIT, *State of Maryland:*

Be it remembered that on the sixth day of March, in the year one thousand eight hundred and thirty, personally appeared Samuel A. Chew, the party grantor to the foregoing deed, before us, the subscribers, two of the State of Maryland's justices of the peace in and for Queen Ann's County aforesaid, and acknowledged the said deed or instrument of writing to be his act and deed, and the lands and premises, with the appurtenances therein mentioned, to be the right and estate of the within-named Thomas Murphey, party grantee in said deed, his heirs, and assigns, forever, according to the true intent and meaning of the said deed or instrument of writing and the acts of assembly in such case made and provided.

Taken and certified the day & year aforesaid by

ISAAC WINCHESTER.
HENRY E. GIBSON.

N. B.—The interleneation in the nineteenth line of the words "with the original line of the manor land," and the words "cedar post," in the eighteenth line, was made before the execution of the within deed.

ISAAC WINCHESTER.
HENRY E. GIBSON.

36 STATE OF MARYLAND, *Queen Anne's County, to wit:*

I hereby certify that the aforegoing is truly taken and copied from Liber T. M., No. 5, folio 363, &c., one of the land record books for Queen Anne's County.

SEAL'S PLACE. In testimony whereof, I hereto subscribe my name, and the seal of the circuit court for Queen Anne's County affix, the 4 day of February, 1864.

SAMUEL E. DYOTT, *Clerk.*

[U. S. 5-cts. stamp.]

QUEEN ANN'S COUNTY, *to wit:*

Be it remembered that on the twenty-first day of January, in the year eighteen hundred and forty, the following deed was brought to be recorded, to wit:

This indenture, made this fourth day of January, in the year of our Lord one thousand eight hundred and forty, between Samuel A. Chew, of Queen Ann's County, in the State of Maryland, of the one part, and James Bright, ju'r. of the county and State aforesaid, of the other part, witnesseth: That the said Samuel A. Chew, for an in consideration of the sum of three thousand dollars, current money of the United States, to him in hand paid by the said James Bright, ju'r, before the sealing and delivery of these presents, the receipt whereof he, the said Samuel A. Chew, doth hereby acknowledge, and from every part and parcel thereof doth hereby acquit, exonerate, and discharge the said James Bright, ju'r, his heirs, executors, and administrators, he, the said Samuel A. Chew, hath granted, bargained, sold, aliened, enfeoffed, and confirmed, and, by these presents, doth grant, bargain, sell, alien, enfeoff, and confirm, unto the said James Bright, ju'r, his heirs, and assigns, all that
37 farm, commonly called Green's Creek farm, situate, lying, and being on Kent Island, in Queen Ann's County aforesaid, being part of a tract of land called Kent Fort Manor, which is contained within the metes and bounds, courses and distances, following, that is to say: Beginning for the same at a ceder post at the head of Green's Creek, and runs from thence north twelve degrees east seventy and four-tenths perches, then north seventy-five degrees east seventy-one perches, then north thirty-five degrees east twenty-six perches, then north twenty-six degrees east one hundred and twenty perches, then north thirty-six and a quarter degrees east thirteen perches, then north forty-five degrees east nine and eight-tenths perches, then north twenty-eight degrees east eleven and three-tenths perches, then south eighty-nine degrees east eighteen and seven-tenths perches, to a stake in the head of Long Creek—all the before-mentioned lines being laid down by and with the division fence; then running from the head of Long Creek, by and with the lines of the land of the late Thomas Murphey, to the Eastern Bay; then with the Eastern Bay, to Green's Creek; then up the middle of said creek to the place of beginning, containing two hundred and ninety-six acres, more or less; fifty-one and one-fourth acres are contained within Long and Green's Creeks, leaving two hundred and forty-four and three-quarters acres of land, together with all and singular the buildings, improvements, woods, ways, waters, water-courses, right, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, and interest whatsoever of him, the said Samuel A. Chew,
38 both at law and in equity, of, in, to, and out of the said tract or parcel of land and premises hereby bargained and sold, or meant, mentioned, or intended hereby so to be, and every or any part or parcel

thereof; to have and to hold the said tract or parcel of land, so as aforesaid described, called Kent Fort Manor, or by whatever name the same may be called, together with the buildings and appurtenances, and all and singular other premises hereby bargained and sold, or meant, mentioned, or intended hereby so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said James Bright, ju'r, his heirs, and assigns, forever, and to and for no other use, intent, or purpose whatsoever; and the said Samuel A. Chew, for himself, his heirs, executors, and administrators, doth hereby covenant, grant, promise, and agree to and with the said James Bright, ju'r, his heirs, executors, administrators, or assigns, that he, the said Samuel A. Chew, and his heirs, the said tract or parcel of land and premises hereby granted, bargained, and sold, and every part and parcel thereof, with the appurtenances thereunto belonging, to him, the said James Bright, ju'r, his heirs, and assigns, against him, the said Samuel A. Chew, and his heirs, and against all and every person or persons whatsoever claiming or to claim any right, title, or interest in and to the same, or any part thereof, shall and will hereafter warrent and forever defend by these presents. And the said Samuel A. Chew, for himself and his heirs, doth hereby covenant, promise, and agree to and with the said James Bright, ju'r, his heirs and assigns, that he, the said Samuel A. Chew, his heirs, shall and will, from time to time, and at all times hereafter, at the resonable request, cost, and charge of the said James
39 Bright, ju'r, or any of his heirs or assigns, make and lawfully execute, acknowledge, and deliver all and every such further and other deed, conveyance, and assurance in the law whatsoever for the better and fully conveying and assureing to the said James Bright, ju'r, his heirs, and assigns, the said premises, with the appurtenances heretofore described and mentioned to be bargained and sold, according to the true intent and meaning of the parties to these presents, as by the said James Bright, ju'r, or his heirs or assigns, or by any of their counsel learned in the law, shall be reasonably devised, or advised and required. In testimony whereof, the said Samuel A. Chew has hereunto set his hand and seal on the day and year first above written.

SAM'L A. CHEW. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. S. HAMBLETON.
WM. TANNER.

Received, from James Bright, ju'r, the sum of three thousand dollars, being the consideration expressed to be paid in the foregoing indenture.

SAM'L A. CHEW.

WM. S. HAMBLETON.
WM. TANNER.

STATE OF MARYLAND, *Queen Ann's County:*

Be it remembered, and it is hereby certified, that on this fourth day of January, in the year of our Lord one thousand eight hundred and forty, before the subscribers, two justices of the peace of the State of Maryland, in and for Queen Ann's County aforesaid, personally appears Samuel A. Chew, he being known to us to be the person who is named and described as, and professing to be, a party to the foregoing
40 deed or indenture, and doth acknowledge the said indenture or instrument of writing to be his act and deed.

In testimony whereof, we hereunto subscribe our names on the day and year aforesaid.

WM. S. HAMBLETON.
WM. TANNER.

STATE OF MARYLAND, *Queen Anne's County, to wit:*

I hereby certify that the aforegoing is truly taken and copied from Liber J. T., No. 3, folios 18 and 19, one of the land records for Queen Anne's County.

In testimony whereof, I hereto subscribe my name, and the seal of the circuit court for Queen Anne's County affix, this 4 day of February, 1864.

(SEAL'S PLACE.)

SAMUEL E. DYOTT, *Clerk.*

[U. S. 5-cts. stamp.]

QUEEN ANNE'S COUNTY, *to wit:*

Be it remembered that on this 18th day of February, in the year of our Lord one thousand eight hundred and sixty-five, the following deed was brought to be recorded, to wit:

[U. S. int. rev., E. C. D., Dec. 15, 1864. J. M. R., Feb. 4, 1865, 50 c.]

This mortgage, made this fifteenth day of December, in the year eighteen hundred and sixty-four, by Eliza C. Deery, of the city of Philadelphia, witnesseth: That in consideration of the sum of three hundred dollars, current money, she, the said Eliza C. Deery, doth grant unto John M. Robinson, of Queen Ann's County, of the State of Maryland, all the undivided right, title, and interest of the said Eliza C. Deery in and to that tract or parcel of land, being part of "Kent Fort Manor," situate on Kent Island, in Queen Ann's County, and State of Maryland, and
41 containing four hundred acres of land, more or less, being the tract of land of which Lowman A. Chew died seized: Provided, That if the said Eliza C. Deery shall pay unto the said John M. Robinson the said sum of three hundred dollars, current money, on or before the fifteenth day of July, in the year eighteen hundred and sixty-five (1865), with interest on said sum from the date of this mortgage, then these presents shall be void.

And the said Eliza C. Deery covenants with the said John M. Robinson that she will pay unto him the said sum of money, to wit, the sum of three hundred dollars, with interest, as herein specified, and in default of same the said Robinson shall enter.

Witness my hand & seal. E. C. DEERY. [SEAL.]

Test: ALLEN E. FORRESTER.

STATE OF MARYLAND, *Baltimore City, to wit:*

I hereby certify that on this fifteenth day of December, in the year eighteen hundred and sixty-four, before the subscriber, a justice of the peace of the State of Maryland for the city of Baltimore, personally appeared Eliza C. Deery, and acknowledged the aforegoing mortgage to be her act and deed. ALLEN E. FORRESTER.

STATE OF MARYLAND, *Baltimore City, set:*

I hereby certify that Allen E. Forrester, esquire, before whom the annexed acknowledgment was made, and who has thereto subscribed
42 his name, was at the time of so doing a justice of the peace of the State of Maryland in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof, I hereto set my hand and affix the seal of the superior court of Baltimore City this 15th day of December, A. D. 1864.

ALFORD MACE,
Clerk of the Superior Court of Baltimore City.

[Seal: The superior court of Baltimore City in the 13 judicial circuit of Maryland.]

[U. S. int. rev., A. M., Dec. 15th, 1864, 05 cts.]

STATE OF MARYLAND, *Queen Ann's County, to wit:*

I hereby certify that on this fourth day of February, in the year eighteen hundred and sixty-five, before the subscriber, a justice of the peace of the State of Maryland for Queen Ann's County, personally appeared John M. Robinson, party mortgagee, and made oath in due form of law that the consideration set forth in the aforegoing mortgage is a true and bona-fide consideration, as therein set forth.

JNO. H. ROWLINSON.

STATE OF MARYLAND, *Queen Anne's County, to wit:*

I hereby certify that the above and foregoing is truly taken and copied from Liber S. E. D., No. 1, folios 460 and 461, a land-record book for Queen Anne's County.

In testimony whereof, I hereto subscribe my name, and { SEAL'S PLACE. } the seal of the circuit court for Queen Anne's County affix, this eleventh day of April, A. D. 1868.

JAMES WOOTERS,
Clerk of the Circuit Court for Queen Anne's County.

[U. S. rev. stamp 5 cents. J. W., Ap'l 11, 1868.]

43 And the defendants then further offered in evidence (subject to exception) the record following:

STATE OF MARYLAND, *Queen Anne's County, to wit:*

At a circuit court of the second judicial circuit of the State of Maryland, sitting as a court of equity, begun and held for Queen Anne's County, at Centreville, in said county, on the fourth Monday of January, being the twenty-seventh day of the same month, in the year of our Lord one thousand eight hundred and sixty-eight, were present the Honorable Joseph A. Wickes, associate judge; James Wooters, clerk:

In the record of proceedings, amongst others, were the following, to wit:

J. K. LINNELL AND DORINDA, HIS WIFE, M. E. SWAN and Lavinia, his wife, Eliza C. Deery, and Joseph L. Schnebly,

vs.

JAMES T. ROGERS, THE PRESIDENT AND DIRECTORS of the Bank of Baltimore, Roderick W. Eareckson, adm'r of Roderick Eareckson, and William I. Bryan, adm'r of James Embert.

Be it remembered that heretofore, to wit, on the seventeenth day of October, in the year of our Lord one thousand eight hundred and sixty-four, the said J. K. Linnell and Dorinda, his wife, M. E. Swan and Lavinia, his wife, Eliza C. Deery, and Joseph C. Schnebly, by John M. Robinson, esquire, their solicitor, filed in the circuit court for Queen Anne's County, sitting as a court of equity, their bill of complaint against the said James T. Rogers, the president and directors of the Bank of Baltimore, Roderick W. Eareckson, adm'r of Roderick Eareckson, and William I. Bryan, adm'r of James Embert, in the words following, to wit:

44 To the Hon. James B. Ricaud, judge of the circuit court of Queen Anne's County, in equity:

The bill of complaint of J. K. Linnell and Dorinda, his wife, M. E. Swan and Lavinia, his wife, Eliza C. Deery, and Joseph L. Schnebly, of

the city of Philadelphia, humbly shows: That a certain Lowman A. Chew, late of Queen Anne's County, departed this life some time in the year eighteen hundred and sixty-two, seized of valuable real estate situate in said county, and leaving Dorinda, wife of the said J. K. Linnell, Lavinia, wife of the said M. E. Swan, Eliza C. Deery, Joseph L. Schnebly, and H. Chew Schnebly, his heirs at law. Your complainants further charges that the said H. Chew Schnebly has assigned and conveyed unto one James T. Rogers, of the State of Illinois, all of his said interest in said real estate, but that the president and directors of the Bank of Baltimore claim a lien upon the undivided interest of the said H. Chew Schnebly, by virtue of an execution or executions issued upon a judgment in favor of the president and directors of the said bank against the said H. Chew Schnebly, and that Roderick W. Eareckson, administrator of Roderick Eareckson, and William I. Bryan, administrator of James Embert, also claim a lien upon the undivided interest of said H. Chew Schnebly, by virtue of a certain judgment or judgments, and execution or executions, issued thereupon, endorsed to their use, and obtained in the circuit court of Queen Anne's County. Your complainants further charge that a suit has been brought in the district court of the United States for the State of Maryland by the said Eliza C. Deery,
for the purpose of ascertaining the respective interests of the
45 said heirs of Lowman Chew in the aforesaid real estate; but your complainants charge that it will be for the interest and advantage of the heirs of the said Lowman Chew and the said James T. Rogers, alienee of the said H. Chew Schnebly, and the judgment creditors of the said H. Chew Schnebly, as aforesaid, to sell the aforesaid real estate, and divide the proceeds thereof between the said parties, according to their respective interest, as may be hereafter adjudged. And your orators further charge that they have made application to the said James T. Rogers, and the president and directors of the Bank of Baltimore, and to the said Roderick W. Eareckson, administrator of Roderick Eareckson, and William I. Bryan, administrator of James Embert, to unite with your orators in making sale thereof, upon terms which would be convenient and beneficial to all parties; but their request have been without success, & your orators are advised that they must remain without remedy without the aid of this court.

To the end, therefore, that the said James T. Rogers, the president and directors of the Bank of Baltimore, and the said Roderick W. Eareckson, administrator of Roderick Eareckson, and William I. Bryan, administrator of James Embert, may answer the premises, & that a decree may be passed for the sale of said real estate, and the proceeds thereof distributed between said parties, according to their respective interests, and that your orators may have such other and further relief as their case may require, may it please your honor to grant the writ of subpœna against the president and directors of the Bank of Baltimore,
and Roderick W. Eareckson, administrator of Roderick Eareck-
46 son, and William I. Bryan, administrator of James Embert, and an order of publication against the said James T. Rogers, a non-resident, giving notice of the substance and of object of this bill, commanding and warning them to appear in this court at some certain day to be therein named, to answer the premises, and abide by and perform such decree as may be passed therein. And as in duty, &c.

JNO. M. ROBINSON,
Sol. for Complainants.

And thereupon, upon the same day, the said James T. Rogers, the president and directors of the Bank of Baltimore, Roderick W. Eareck-

son, administrator of Roderick Earickson, and William I. Bryan, administrator of James Embert, voluntarily appear in court here, by Philemon B. Hopper, esquire, their solicitor, and file their respective answers to the aforesaid bill of complaint, in the words following, to wit:

In the circuit court of Queen Anne's county.—In equity.

JAS. K. LINNELL & WIFE,& OTHERS,
vs.
JAS. T. ROGERS & OTHERS.

The answer of James T. Rogers to the bill of complaint of Jas. K. Linnell & wife against him and others, in the circuit court of Queen Anne's County, in equity exhibited.

This defendant admits the several matters and things charged in the complainants' bill to be true, & insisting that the said H. Chew Schnebly has conveyed his interest in said real estate to this defendant, to the exclusion of the judgment creditors therein mentioned, submits to such decree as may be right and proper in the premises. And as, &c.

P. B. HOPPER,
Sol. for Def'ts.

47 It is agreed that within answer shall be taken and submitted to the court without affidavit.
Sept. 21, 1864.

JNO. M. ROBINSON,
Sol. for Comp'ts.
P. B. HOPPER,
Sol'r for Def'ts.

In the circuit court of Queen Anne's County.—In equity.

J. K. LINNELL & WIFE,& OTHERS,
vs.
JAS. T. ROGERS & OTHERS.

The answer of the president and directors of the Bank of Baltimore to the bill of complaint of J. K. Linnell & wife, & others, in the circuit court of Queen Anne's County, in equity exhibited.

These defendants admit the several matters & things charged in bill of complainants to be true, and insisting upon their lien against the interest of H. Chew Schnebly, in the hands of his alienee, by virtue of their judgement and execution against the said H. Chew Schnebly, submit to such decree in the premises as may be right and proper.

P. B. HOPPER,
Sol'r for Def'ts.

It is agreed that the above answer shall be taken & submitted to the court without affidavit.
Sept. 21, 1864.

JNO. M. ROBINSON,
Sol. for Comp'ts.
P. B. HOPPER,
Sol'r for Def'ts.

In the circuit court for Queen Anne's County.—In equity.

J. K. LINNELL & WIFE, & OTHERS,
vs.
JAMES T. ROGERS & OTHERS.

The answers of Roderick W. Eareckson, adm'r of Roderick Eareckson, and William I. Bryan, administrator of James Embert, to the bill of complaint of J. K. Linnell & wife, and others, against them and others, in the circuit court of Queen Anne's County, in equity exhibited.

48 These defendants admit the several matters & things charged in said bill of complaints to be true, and, insisting upon their lien by virtue of their judgements and executions against the H. Chew Schnebly, upon the undivided interest of the said H. Chew Schnebly, submit to such decree as may be right and proper in the premises.

P. B. HOPPER,
Sol'r for Def'ts.

It is agreed that within answer shall be taken and submitted to the court without affidavit.
Sept. 21, 1864.

JNO. M. ROBINSON,
Sol. for Comp'ts.
P. B. HOPPER,
Sol'r for Def'ts.

Whereupon the following agreement was filed, to wit:

In the circuit court of Queen Anne's County.—In equity.

J. K. LINNELL & OTHERS
vs.
JAMES T. ROGERS & OTHERS.

It is agreed that the above suit be submitted to James B. Ricaud, judge of the circuit court of Queen Anne's County, in equity, upon bill and answers, & that a decree be passed in pursuance of said bill.
Sept. 21, 1864.

JNO. M. ROBINSON,
Sol. for Comp'ts.
P. B. HOPPER,
Sol'r for Def'ts.

Thereupon the court passed the following decree, to wit:

In the circuit court of Queen Anne's County.—In equity.

J. K. LINNELL & WIFE, & OTHERS,
vs.
JAMES T. ROGERS & OTHERS.

This cause standing ready for hearing, and being submitted in writing with consent of all parties, the proceedings were read and considered.

49 It is, thereupon, this twenty-second day of September, in the year eighteen hundred and sixty-four, by James B. Ricaud, judge of the circuit court of Queen Anne's County, in equity, and by the authority of said court, adjudged, ordered, and decree that the

real estate mentioned in said proceedings be sold; that John M. Robinson, of Queen Anne's County, be, and he is hereby, appointed trustee to make such sale, and that the course and manner of his proceeding shall be as follows: He shall first file in the clerk's office of the circuit court for Queen Anne's County a bond to the State of Maryland, executed by himself, with a surety or sureties, to be approved by the clerk of said court, in the penalty of thirty thousand dollars, conditioned for the faithful of the trust reposed in him by this decree, or which may be reposed in him by any future order or decree in the premises. He shall then proceed to make sale of the said real estate, having given at least three weeks' notice, inserted in some newspaper printed in Queen Anne's County, and such other notice as he may think proper, of the time, place, manner, and terms of sale, which terms shall be as follows: Eight hundred dollars cash on day of sale, and the residue of the purchase in three equal instalments of six, twelve, and eighteen months, with interest from day of sale, to be secured by bond of purchaser satisfactory to the trustee; and as soon as may be convenient after such sale the said trustee shall return to this court a full and particular account of the same, with an affidavit of the truth thereof and the fairness of such sale annexed; and on the ratification of such sale by this court, and on the payment of the whole purchase-money, & not before, the said trustee, by good and sufficient deed, to be executed and acknowledged agreeably to law, shall convey to the purchaser or purchasers of said property, and to his heirs, the property to him sold, clear, free, and discharged of all claim of the parties to this cause, and of any person or persons claiming by, from, or under them; and the said trustee shall bring into this court the money arising on such sale, and the bond or bonds which may be taken for same, to be disposed of under the direction of this court, after deducting therefrom the costs of this suit & such commissions to said trustee as the said court shall think proper to allow in consideration of the skill and attention and fidelity wherewith he shall appear to have discharged his trust. This decree not to prejudice the claim or interests of said parties to this suit in and to the proceeds of said sale; but the said claim, interests, & proportions to hereafter adjudged by this court.

J. B. RICAUD.

And on the seventeenth day of October, in the year aforesaid, John M. Robinson, esquire, the trustee named in the aforegoing decree, filed in court here the following bond, with the endorsement thereon, to wit:

[Internal rev. stamp, $1 00, cancelled.]

Know all men by these presents, that we, John M. Robinson and Pere Wilmer, of Queen Ann's County, in the State of Maryland, are held and firmly bound unto the State of Maryland in the full and just sum of thirty thousand dollars, current money, to be paid to the State of Maryland, or its certain attorney; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 13th day of October, in the year eighteen hundred and sixty-four. Whereas, by a decree of the circuit court of Queen Anne's County, in equity, bearing date on the 22nd day of September, in the year 1864, as passed in a cause in the said court, wherein James K. Linnell & wife, & others, were complainants, and James T. Rogers & others were defend-

ants, the above-bound John M. Robinson has been appointed trustee to make sale of certain real estate in the proceedings mentioned in said cause:

Now, the condition of the above obligation is such, that if the above-bounden John M. Robinson do and shall well and faithfully perform the trust reposed in him by said decree, or that may be reposed in him by any future decree or order in the premises, then the above obligation to be void; otherwise to remain in full force and virtue in law.

JNO. M. ROBINSON. [SEAL.]
PERE WILMER. [SEAL.]

Signed, sealed, and delivered in presence of—

"Filed and approved October 17, 1864.

"S. E. DYOTT, *Clerk.*"

And thereupon further process of and upon the premises aforesaid is further continued by regular continuances from term to term of the said court, until the fourth Monday of July, in the year of our Lord eighteen hundred and sixty-six; at which said fourth Monday of July, in the year last aforesaid, comes into court here as well the said J. K. Linnell and Dorinda, his wife, M. E. Swan and Lavinia, his wife, Eliza C. Deery, and Joseph L. Schnebly, by John M. Robinson, esquire, their solicitor, as the said James T. Rogers, the president and directors of the Bank of Baltimore, Roderick W. Eareckson, administrator of Roderick Eareckson, and William I. Bryan, administrator of James Embert, by Philemon B. Hopper, esquire, their solicitor. And on the thirty-first day of July, in the year aforesaid, John M. Robinson, esquire, the
52 trustee named in the decree, filed in the court here his report of sale, in the words following, to wit:

In the circuit court for Queen Anne's County.—July term, 1866.

J. K. LINNELL & WIFE, & OTHERS,
vs.
JAS. T. ROGERS & OTHERS.

To the Hon.

The report of John M. Robinson, trustee, appointed by a decree in this cause to make sale of certain real estate therein mentioned, shows: That after giving bond, with security, for the faithful discharge of his trust, as required by said decree, and giving notice of the time, place, manner, and terms of sale, by advertisements in the "Centreville Observer," a newspaper printed in Centreville, Queen Anne's County, and also in the Baltimore Gazette, a newspaper printed in the city of Baltimore, and by handbills, extensively circulated throughout said county and the adjoining counties for more than three successive weeks before the day of sale, he did, pursuant to said notice, offer at public, in front of the court-house in Centreville, on Tuesday, October the 18", 1864, the same being a public day for the transaction of business, in said county, between the hours of two & four o'clock p. m. of said day, all that tract or parcel of land called Kent Fort Manor, containing four hundred acres, one roods, and ten perches of land, but not receiving a bid for the same which, in the judgment of your trustee, and also the judgement of James K. Linnell, J. L. Schnebly, two of the heirs at law, and James T. Roberts, party claiming as assignee the interest of Chew Schnebly,

all being present, was adequate to the value of said land, he
53 adjourned the sale thereof. Your trustee further reports that, after having due and proper notice, as aforesaid, of the time, place, manner, and terms of sale, he did, on the tenth day of December, in the said year, offer at public sale, in Stevensville, Kent Island, the same being a village on Kent Island, near said tract of land, the aforesaid property, but the day being stormy, & no bids being offered for same, he again adjourned said [said] sale. Your trustee further reports that, after giving due & proper notice, as aforesaid, of the time, place, terms, & manner of sale, on the eighth day of July, in the year 1865, at Stevensville, he again offered said tract of land at public sale; but not receiving a bid adequate to the value thereof, he again adjourned the sale. Your trustee further reports that, having failed in sundry efforts to effect a sale of said land, either at private or public sale, he again offered said tract of land at public sale, at Stevensville, on the 25 November, in the year 1865, after having given due and proper notice, as aforesaid, of the time, place, & manner, & terms of sale, and sold the same to Charles Stevens, at & for the sum of twenty-seven dollars & ten cents per acres, making the whole purchase-money ten thousand eight hundred and forty-eight dollars and forty-nine cents, he being the highest bidder at said sale. Your trustee begs leave further to report, that he offered said farm in two tracts, & then as a whole tract, the highest bid being for the whole tract, as aforesaid. The aforesaid purchaser complied with the terms of sale, by paying eight hundred dollars cash on day of sale, & giving his bond, with approved security, for the payment of the residue of the purchase-money, in six, twelve, & eighteen months from day of sale, with interest thereon from said time.

54 All of which is respectfully submitted.

JOHN M. ROBINSON, *Trustee.*

STATE OF MARYLAND, *Queen Anne's County, set:*

On this 31st day of July, before the subscriber, a justice of the peace in and for said county, personally appeared the within-named John M. Robinson, trustee, & made oath that the matters & things stated in the foregoing report are true, to the best of his knowledge & belief; & that the sales therein reported were fairly made.

A. M. ARLETT, *J. P.*

And thereupon, on the same day, the following order of ratification was passed, to wit:

In the circuit court for Queen Anne's County.—In equity.—July term, 1866.

JAMES K. LINNELL & WIFE, & OTHERS, }
vs. }
JAMES T. ROGERS & OTHERS }

Ordered, that the sales made and reported by John M. Robinson, trustee, for the sale of the real estate of Lowman Chew, deceased, mentioned in above proceedings, be ratified & confirmed, unless cause to the contrary thereof be shown on or before the first day of November next, provided a copy of this order be inserted in some paper printed in Centreville, once in each of three successive weeks before the first day of October next. The report states the amount of sales to be $10,848 49.

SAMUEL E. DYOTT, *Clk.*

JULY 31, 1866.

Thereupon further process of and upon the premises was further continued, by regular continuances, from term to term of the said court, until the fourth Monday of January, in the year eighteen hundred and sixty-seven, at which said term comes into court here as well the
55 said J. K. Linnell and Dorinda, his wife, M. E. Swan and Lavinia, his wife, Eliza C. Deery, and Joseph L. Schnebly, by John B. Brown, esquire, their solicitor, as the said James T. Rogers, the president and directors of the Bank of Baltimore, Roderick W. Eareckson, administrator of Roderick Eareckson, and William I. Bryan, administrator of James Embert, by their solicitor; and thereupon the Honorable John M. Robinson announced his disqualification to try this cause, by reason of having been counsel for the complainants; and thereupon the following agreement was filed, to wit:

In the circuit court for Queen Anne's County.

LINNELL ET AL. }
vs. } No. 144.—Chancery.
ROGERS ET AL. }

It is hereby agreed that Lloyd Tilghman, esquire, shall be appointed special judge to try the above case.

P. B. HOPPER,
Sol'r for James T. Rogers & Bank of Baltimore.
JOHN B. BROWN,
Sol'r for Comp'ts & for W. I. Bryan, adm'r of James Embert, & R. W. Eareckson, adm'r of Rod'k Eareckson.

And afterwards, to wit, on the thirtieth day of April, in the year last aforesaid, Henry D. Farnandis and Daniel Scott, executors of Otho Scott, deceased, presented to the court their petition in the words following, to wit:

To the honorable the circuit court for Queen Anne's County, as a court of equity:

The petition of Henry D. Farnandis and Daniel Scott, executors of the last will and testament of Otho Scott, deceased, of Harford County,
56 Maryland, respectfully shows that, under a decree of your hon. court, passed in a cause therein pending, in which J. K. Linnell & Dorinda, his wife, & others, are complainants, and James T. Rogers & others are defendants, John M. Robinson, esq., as trustee, has sold the lands, by said decree directed to be sold, being the real estate of a certain Lowman A. Chew, deceased, and that the proceeds of sale are now in court for distribution under its order. That a certain Eliza C. Deery, one of the heirs at law of the said Lowman A. Chew, and as such entitled to an undivided interest in said estate, being indebted to the said Otho Scott in the sum of eleven hundred dollars, with interest from the 7th day of February, 1863, by deed of mortgage of that date duly executed and recorded, conveyed all her undivided interest and estate in said lands to said Otho Scott; that said mortgage was conditioned for the payment of said debt and interest three years after its date, and also for the payment of all taxes on said mortgage debt. That the said Otho Scott died about the 9th day of March, 1864, and letters testamentary on his estate have been granted to your petitioners by the orphans' court of Harford County, as will appear from the certificate of the register of wills of said county, filed herewith as part of this petition, marked F. & S., No. 1. That the whole of said mortgage debt, with interest from its date, is due to your petitioners as executors of said Otho

Scott, and also the sum of forty-three dollars $\frac{67}{100}$ ($43 67), for taxes on said mortgage. All of which your petitioners claim they have a right to be paid from the proceeds of sale.

Your petitioners file herewith a copy of said mortgage, and a particular statement of said debt and taxes, marked F. & S., No. 2,
57 which is to be taken as part of this petition. Your petitioners pray that the amount so due them may be paid from the proceeds of sale now in court, and that to such extent they may be substituted for the said Eliza C. Deery, & for other relief. And, as in duty bound, they will ever pray, &c.

HENRY D. FARNANDIS &
DANIEL SCOTT,
Exr's of O. Scott, dec'd.

The exhibit marked F. & S., No. 1, referred to in and filed with the aforegoing petition, is in the words following, to wit:

STATE OF MARYLAND, *Harford County, set:*

I, B. H. Harison, register of wills for Harford County, hereby certify that it appears from the records in the orphans' court for said county that on the sixteenth day of March, 1864, letters of testamentory on all and singular the goods, chattels, and credits of Otho Scott, late of Harford County, deceased, were granted by said court to H. D. Farnandis & Daniel Scott, who has given bond, with approved security, for the faithful performance of their duty as executors as aforesaid.

[U. S. internal rev. stamp—B. H. B., Feb. 9, 1867—5 cts.]

{ SEAL'S } { PLACE. } In testimony whereof, I hereunto subscribe my name, and affix the seal of the orphans' court for Harford County, this ninth day of February, eighteen hundred and sixty-seven.

B. H. HARISON,
Register of Wills for Harford Co.

The exhibit marked F. & S., No. 2, also refered to in and filed with the aforesaid petition, is in the words following, to wit:

QUEEN ANNE'S COUNTY, *to wit:*

Be it remembered, that on the tenth day of February, in the year of our Lord one thousand eight hundred and sixty-three, the following deed of mortgage was brought to be recorded, to wit: This mortgage, made this 7" day of February, eighteen hundred and sixty-
58 three, between Eliza C. Deery, now of the city of Baltimore, & Otho Scott, of Harford County, witnesseth, that the said Eliza C. Deery, in consideration of the sum of eleven hundred dollars, advanced to her by the said Otho Scott, hath granted & doth hereby grant unto the said Otho Scott, & his heirs, all her undivided interest & estate in & to a tract of land lying in Queen Anne's County, and containing six hundred acres, more or less, & being the same land & all the lands of which Lowman A. Chew, a lunatic, died seized, the said Eliza being one of the heirs of the said Chew: provided that the said Eliza, or her heirs, pay to the said Otho Scott the above-mentioned sum of money three year after date hereof, with interest thereon from this date, & also all taxes and public dues which may be assessed on this mortgage; then this mortgage to be void. Witness my hand & seal.

ELIZA C. DEERY. [SEAL.]

Witness: P. T. WILSON.

[Stamp, $2 00 dollars.]

STATE OF BALTIMORE, ss., *Baltimore City, to wit:*

On the 7th day of February, eighteen hundred and sixty-three, came before me, the subscriber, a justice of the peace in and for said city, the within-named Eliza C. Deery, and acknowledged the foregoing deed of mortgage to be her act, and also, at the same time, came John O. Wharton, & made oath, on the Holy Evangelly of Almighty God, before me, a justice as aforesaid, that the consideration stated in the aforegoing mortgage is true and bona fide as therein set forth, & also made oath as aforesaid that the was authorized by the said Otho Scott to make this affidavit as his agent. { Stamp, 5 cts. }

Acknowledged and sworn before me.

P. T. WILSON.

59 STATE OF MARYLAND, *Baltimore City, set:*

I hereby certify that Peregrine T. Wilson, esquire, before whom the annexed acknowledgment & affidavit were made, and who has thereto subscribed his name, was, at the time of so doing, a justice of the peace of the State of Maryland, in and for the city of Baltimore, duly commissioned and sworn. { Stamp, 5 cents. }

In testimony whereof, I hereto set my hand and affix the seal [SEAL.] of the superior court of Baltimore City, this seventh day of February, 1863, A. D.

GEO. E. SANGSTON,
Clerk of the Superior Court of Baltimore City.

STATE OF MARYLAND, *Queen Anne's County, to wit:*

I hereby certify the above and aforegoing is truly copied and taken from Liber M. B., No. 2, folio 242, one of the land-record books for Queen Anne's County.

[U. S. internal—S. E. D., Feb'y 6, 1867—rev. stamp, 5 cts.]

{ SEAL'S PLACE. } In testimony whereof, I hereto subscribe my name, and affix the seal of the circuit court of Queen Anne's County, this sixth day of February, A. D. 1867.

SAM'L E. DYOTT,
Clerk of the Circuit Court of Queen Anne's County.

Cost of copy	47
Cert. & seal	25
I. R. stamp	05
	77 cts.

Eliza C. Deery, Dr., to estate of Otho Scott, dec'd.

1863, 10 Feb'y.—To am't of above mortgage			$1,100
To interest from date of " till day of sale, Nov. 25, 2865			184 80
To taxes on mortgage, 1863—State, 25c. for $100			
Co.	58 " "		
	83		9 13
1864—State,	15 " "		
Co.	54 " "		
	69		7 59
1865—State,	30 " "		
Co.	55 " "		
	85		9 35

1866—State, 30	"	"		
Co. 85	"	"		
115				12 65
Bounty tax, 1864, 45	"	"		4 95
				$1,328 47

60 MARYLAND, *Harford County, to wit:*

I hereby certify that on this 9th day of February, eighteen [eighteen] hundred and sixty-seven, before the subscriber, a justice of the peace of the State of Maryland, in and for Harford County, personally appeared Henry D. Farnandis and Daniel Scott, executors of Otho Scott, dec'd, and made oath, on the Holy Evangely of Almighty God, that the aforegoing account is true, and that it doth not appear, from the books and papers of the said Otho Scott, that any part or parcel thereof has been paid, or any security or satisfaction given therefor other than therein stated, and that they believe the whole debt, interest, and taxes are due as stated.

JOHN T. SPICER.

[U. S. internal—J. T. S., 9th July, 1867—rev. stamp, 5c.]

STATE OF MARYLAND, *Harford County, to wit:*

I, William H. Dallam, clerk of the circuit court for Harford County, the same being a court of law and record, do hereby certify that John T. Spicer, esquire, before whom the aforegoing affidavit was made, and who has thereto subscribed his name, was, at the time of so doing, a justice of the peace of the State of Maryland, in and for Harford County aforesaid, duly elected, commissioned, and qualified.

[U. S. internal—Feb'y 9th, 1867, W. H. D.—rev. stamp, 5 cts.]

{ SEAL'S PLACE. } In testimony whereof, I have hereto subscribed my name, and affixed the seal of the circuit court for Harford County, at Belair, this 9th day of February, 1867.

W. H. DALLAM, *Clerk.*

And on the day and year aforesaid the following agreement was filed, to wit:

In the circuit court for Queen Anne's County, sitting as a court of equity.

J. K. LINNELL & OTHERS
vs.
JAMES T. ROGERS & OTHERS.

61 It is agreed that a commission shall issue to James Ward Smyth, attorney at law in the city of New York, to take testimony in the above-named cause.

April 30, 1867.

P. B. HOPPER,
Sol'r for Jas. T. Rogers.
JOHN B. BROWN,
Sol'r for Compl'ts & Bryan & Eareckson.

Which said commission was accordingly issued.

Whereupon further process of and upon the premises was further continued until the first Monday of May then next; on which said first

Monday of May, in the year eighteen hundred and sixty-seven, comes into court here the said J. K. Linnell and Dorinda, his wife, M. E. Swan and Lavinia, his wife, Eliza C. Deery, and Joseph L. Schnebly, by their solicitor aforesaid, and the said James T. Rogers, the president and directors of the Bank of Baltimore, Roderick W. Eareckson, administrator of Roderick Eareckson, and William I. Bryan, administrator of James Embert, by their solicitor aforesaid.

And on the seventeenth day of June, in the year aforesaid, Philemon B. Hopper, esquire, filed in court here the following report and audits, to wit:

In the circuit court for Queen Anne's County, sitting as a court of equity.

JAMES K. LINNELL & OTHERS
vs.
JAMES T. ROGERS & OTHERS.

To the honorable the judge of the circuit court for Queen Anne's County:

The auditor respectfully reports, that he has examined the proceedings in this cause, and has therefrom, and by direction of counsel, prepared the following account "A," and also account "B," herewith returned.

In both accounts he has charged the trustee with the amount of sales
62 of real estate as reported by him, and credited him with the am't of his commissions and expenses, the costs of suit of both complainants and defendants, and the auditor's fee. The residue was divided into five equal parts, to be paid to the five heirs at law named in the bill, or for their use, as set forth in the account. The share of E. C. Deery has been endorsed to the use of the executors of Otho Scott, to pay the amount of her mortgage to him, a copy of which is filed, and after them to pay J. M. Robinson two claims, one a judgment of Jervis Spencer, paid by said J. M. Robinson vs. E. C. Deery, and binding upon her interest in the real estate before its sale by the trustee; the other a note, secured by mortgage, from the said E. C. Deery to the said J. M. Robinson, upon her said share of the real estate. The two accounts, "A" and "B," agree, except in the disposition of the original share which belonged to H. Chew Schnebly, in account "A" it being assigned to James T. Rogers, who claims to have purchased the same before there was any lien thereon, and in account "B" the said share of H. Chew Schnebly is assigned to R. W. Eareckson, adm'r of Roderick Eareckson, & W. I. Bryan, adm'r of Jas. Embert, in part satisfaction of a judgment assigned to them, and which they paid, as securities, to the said H. Chew Schnebly, and which, they claim, entitles them to his share of the proceeds of the sale. The two accounts are prepared to raise the question between said claimants of H. Chew Schnebly's proportion.

P. B. HOPPER, *Auditor.*

Dr. The real estate of H. Chew Schnebly & others in account with J. M. Robinson, esq'r, trustee for the sale thereof. *Cr.*

63

1865.			
Nov. 25. To the trustee, for his commissions ...			478 94
To the trustee, for his expenses			151 25
To the complainants, for their costs of suit, viz:			
Solicitor.....		20 00	
Sam'l E. Dyott, cl'k, for fees accrued....		4 50	
Same, for further propable costs		20	44 50

To the defendants, for their costs of suit, viz:			
Solicitor	10		
Samuel E. Dyott, clerk, for fees accrued.	3 25		
Same, for further probable costs	10 00		23 25
To the auditor, for his costs			4 50
To Jacob S. Schnebly			2,029 21
To Dorinda Linnell, wife of Jas. K. Linnell			2,029 21
To Lavinia Swan, wife of Matthew E. Swan			2,029 21
To Eliza C. Deery, for the use, 1st, of the executors of Otho Scott, to pay mortgage for $1,100 00, with interest from 7th Feb'y, 1863, & the taxes thereon & costs of voucher, &c., as per exhibits filed; 2dly, for the use of J. M. Robinson, to pay judg't of Jervis Spencer vs. Eliza C. Deery, for $164 36, with int. from 27' March, 1863, & costs of suit, & of copy, as per copy filed; and, 3rdly, for the use of J. M. Robinson, to pay note & mortgage of E. C. Deery to him for $300, with interest from 1st Dec., 1863, as per note filed; balance for herself			2,029 21
To James T. Rogers, vendee & assignee of H. Chew Schnebly, subject to the payment of costs upon the contest for his share			2,029 21
			10,848 49

64 1865.

Nov. 25. By amount of proceeds of sales of real estate, as per trustee's report of same 10,848 49

Dr. The real estate of H. Chew Schnebly in account with J. M. Robinson, esq'r, trustee, for the sale thereof. *Cr.*

1865.			
Nov. 25. To the trustee, for his commissions			478 94
To the trustee, for his expenses			151 25
To the complainants, for their costs of suit, viz:			
Solicitor	20 00		
Samuel E. Dyott, for fees accrued	4 50		
Same, for further probable costs	20 00		44 50
To the defendants, for their costs of suit, viz:			
Solicitor	10		
Samuel E. Dyott, for fees accrued	3 25		
Same, for further probable costs	10 00		23 25
To the auditor, for his costs			4 50
To Jacob C. Schnebly			2,029 21
To Dorinda Linnell, wife of Jas. K. Linnell			2,029 21
To Lavinia Swan, wife of Matthew E. Swan			2,029 21
To Eliza C. Deery, for the use, 1st, of the executors of Otho Scott, to pay mortgage for $1,100 00, with interest from 7" Feb'y, 1863, & the taxes thereon, and costs of voucher, &c., as per exhibits filed; 2dly, for the use of J. M. Robinson, to pay judgment of Jervis Spencer vs. Eliza C. Deery,			

for $164 36, with interest from 27th March, 1863, & costs of suit, & costs of copy, as
65 per copy filed; 3rdly, for the use of J. M. Robinson, to pay note & mortgage of E. C. Deery to him for $300, with int. from 15 Dec'r, 1863, as per note filed; & balance for herself.

To Roderick W. Eareckson, adm'r of Roderick Eareckson, & William I. Bryan, adm'r of James Embert, in part of their jud't, vs. H. Chew Schnebly and themselves, endorsed to them..... 2,029 21

10,848 49

1865.
Nov. 25. By amount of sales of real estate, as per trustee's report of same..... ..... 10,848 49

10,848 49

P. B. HOPPER, *Auditor.*

And afterwards, to wit, on the ninth day of July, in the year aforesaid, Lloyd Tilghman, esquire, who was heretofore appointed special judge to try this cause, appeared in court and took the oath prescribed by law, as follows, to wit:

J. K. LINNELL & OTHERS *vs.* JAMES T. ROGERS & OTHERS. } No. 144.—Chancery.

I, Lloyd Tilghman, do swear that I will try the above cause, now depending in the circuit court for Queen Anne's County, without partiality or prejudice, to the best of my ability: So held me God.

LLOYD TILGHMAN.

JULY 9, 1867.

Which said oath was taken before the clerk of the circuit court
66 for Queen Anne's County and signed in the test-book thereof.

Whereupon the court pass the following order, to wit:

In the circuit court of Queen Anne's County.—In equity.—May term, 1867.

JAS. K. LINNELL & OTHERS *vs.* JAS. T. ROGERS & OTHERS.

It is, on this 9th day of July, 1867, ordered, that the trustee's report be finally ratified and confirmed, no cause to the contrary thereof being shown, although due notice has been given.

LLOYD TILGHMAN, *Special Judge.*

And on the same day the following agreement was filed, to wit:

In C. C. Q. A. Co.—In equity.

LINNELL ET AL.
vs.
ROGERS ET AL.

It is agreed, between the parties to this cause, that the auditor's report, heretofore filed herein, shall be finally ratified and confirmed, except so much thereof as relates to the distributive share of H. C. Schnebly and the various parties claiming same, which is to be left open for the decision of the court upon said conflicting claims, upon proofs and arguments, unless otherwise submitted.

JNO. M. ROBINSON,
For Linnell & Wife, Swan & Wife, J. L. Schnebly, & Others.
JOHN B. BROWN,
Solicitor for R. W. Eareckson & W. I. Bryan.
P. B. HOPPER,
Sol'r for Jas. T. Rogers & Bank of Baltimore.

And on the day and year last aforesaid Lloyd Tilghman, esquire, the special judge in this cause, endorsed upon the auditor's
67 report, marked "B," heretofore filed in this cause, the following order, to wit:

The within audit being submitted by all parties for ratification, except so much thereof as relates to the distributive share of H. C. Schnebly, & the parties claiming same, it is therefore, on this 9th day of July, 1867, ordered that the within audit be finally ratified & confirmed, with the exception as aforesaid, and the within trustee be directed to pay to the several parties entitled their distributive share, together with their proportion of interest.

LLOYD TILGHMAN, *Special Judge.*

Thereupon further process of and upon the premises aforesaid was further continued, by regular continuances, from term to term of the said court, until the fourth Monday of January then next, at which said fourth Monday of January, in the year eighteen hundred and sixty-eight, comes into court here the said J. K. Linnell, and Dorinda, his wife; M. E. Swan, and Lavinia, his wife; Eliza C. Deery and Joseph L. Schnebly, by their solicitor aforesaid, and James T. Rogers, the president and directors of the Bank of Baltimore; Roderick W. Eareckson, administrator of Roderick Eareckson, and William I. Bryan, administrator of James Embert, by their solicitor aforesaid.

STATE OF MARYLAND, *Queen Anne's County, set:*

I hereby certify that the aforegoing is truly copied and taken from the record of proceedings of the circuit court for Queen Anne's County.

{ SEAL'S } In testimony whereof I hereto subscribe my name and
{ PLACE. } affix the seal of the circuit court for Queen Anne's County,
68 this ninth day of April, in the year eighteen hundred and sixty-eight.

JAMES WOOTERS, *Clerk.*

Cost of record, $7 63.

[U. S. int. rev. stamp—J. W. Ap'l 9, 1868—5 cents.]

And proved that the plaintiff, on the previous trial of the case, had produced & offered to the court the deed from Philip Barton Key to Arthur Bryan, aforegoing, to maintain the issue on her part joined, in the manner and for the purposes set forth in the record of the previous trial, which may be read from the printed record in the Supreme Court, as if incorporated herein.

The defendants then gave in evidence, by James Bright, that he is the person named in the deed from Samuel A. Chew to James Bright, offered in evidence; that the defendant, John Bright, is his son, and occupied the farm under him as tenant when this suit was brought. The farm contains two hundred and forty and a quarter acres, or thereabouts. On being shown the plat of Kentfort Manor, offered in evidence by the plaintiff, he stated that Long Point farm contains the tract described in the deed from Chew to Murphy; that the land in his (Bright's) possession, and belonging to him, is between that and Middle Creek; that Middle Creek runs between the land of witness and that of Lowman Chew; the line between said lands runs from the head of the creek in a north or N. east direction to the N. boundary of the tract; Chew's land is in front of witness's, to the west. The balance of the land, the southern part of the tract, is held by the Crays; Martha Cray,
Palmer, and Goodhand occupy Cray's land—the last two being
69 tenants. Lane now occupies that formerly held by Lowman Chew,
and did when suit was brought, and it contains some 400 acres, more or less. Witness has known Kentfort Manor for some thirty years, but is not positive as to the time; has known it since he was a boy; is now nearly 60 years old, he supposes. Bought his farm from Sam'l A. Chew, in the spring of 1839, but did not get possession till Christmas, 1840; it was rented out; Buel held it. Remembers when Murphy took possession of his farm; it was sometime after witness bought that Murphy took possession, but he (the elder Murphy) bought long before witness. In speaking of taking possession he refers to the son, the younger Murphy. Witness does not remember the precise time when Samuel A. Chew moved to the Manor. About witness' first recollection, Samuel A. Chew was living on the farm where he died, and to which his son, Lowman Chew, succeeded. Does not remember when the improvements were made by Chew; they were small. Witness was at Sam'l A. Chew's house shortly after his death; helped to lay him out. He had rented to Cook. Witness has known the lower part of the manor since a boy, when he visited there, but at that time considered himself a young man. It was then occupied by Hopkins; he didn't tell witness whom he rented it from. (The witness was then asked by counsel for defence who owned the place. Objected to by counsel for plaintiff.) Hopkins occupied the whole place. Has been familiar with Cray's and Chew's property since witness moved there; Chew's property is some 300 or 400 yards from witness' house; Cray's house is about one mile distant from witness; there is a fence between the Chew farm & Cray's; witness is familiar
with the fence; no change has been made in the location of the
70 fence since witness has known the property; his attention was
not brought to the fence before he purchased; there is a gate through this fence through which witness has been, and thinks a public road runs to Cray's gate, but has not been there for some time. Witness knew Robert Tait; he was in occupancy there at witness' first recollection; has often seen him, been in his company, but was never there during his occupancy; was then quite small; has seen him on the island; was never at his residence; he was a captain of a company of militia;

frequently saw him at drills, &c.; this was since the war of 1812; Hopkins was his tenant. The plat exhibited seems correct; the distance from the head of the creek to Eastern Bay, along the division fence, is about half a mile. The Crays are in possession of the southern part of the property. Dr. Cray's representative, his son Richard, is dead; he left his widow, Martha, (daughter of witness;) Richard has been dead five or six years; the doctor has been dead forty years or more; he died on the place occupied by Martha Cray when this suit was brought. Robert A. Tait has been dead twenty years, more or less. The doctor lived there until his death; he was found dead in his cornfield, at least forty years ago.

On cross-examination, witness stated the division fence, before mentioned, between the Chew and Gray farms, is about half a mile long; there is in it a gate leading to the house. There are four farms south of the fence; two of them are held by Cray's heirs, and were so held when this suit was brought; two by witness, now, having been bought by him from his daughter, (who held them at the time of suit brought,) on their sale by order of the court for Richard Cray's debts, since this suit commenced. Has held 200 acres, constituting these two farms, since
71 last spring. When witness first knew it, there was only one farm south of the division fence. Knows Dr. Cray lived there only by hearsay in the neighborhood. After Richard Cray got possession, twenty years ago, he built at the extreme portion; he first divided the southern part into several farms; it was all one farm before. Hopkins lived in Dr. Cray's house after the doctor's death; does not recollect any old men on the place but Cray and Hopkins. There was always a gate in, and a road through, the fence. Witness left his place 11 or 12 years ago. Everybody goes through the gate; it is the only way to go into the southern part of Kentfort Manor by land. The straight or division fence, of which I have spoken, runs to the head of Northwest Creek, and forms a water-fence at the creek; another fence begins on N'west Creek, near the first, and runs south; the south fence is straight as far as it goes, & then it joins another fence near the Cray house, which last fence goes down to the creek, east of the house, which empties into Eastern Bay; has no recollection of any change in the fences; cannot say whether there was a water-fence at the Northwest Creek; it is very difficult for stock to get by, it is so miry there; on the eastern side (on Eastern Bay) there was a water-fence; does not remember it being down or carried away by ice. Tides there are often very low. The soil is hard on the Eastern Bay side, and the flats not miry; has seen stock go round that water-fence. Does not know the rise & fall of the tides; has frequently seen the flats bare and hard and sandy beyond the fence, along on that side; saw no miry place there. Northwest Creek has two prongs. Knew William Bryan; he lived in Pine Neck; he never
72 lived on Kent Island, to witness' knowledge. When witness first recollects, the north part of the manor was occupied by S. A. Chew; that was 20 or 30 years ago, may be longer. Thinks he has known the gate in the division fence to be secured by a chain, hooked on a nail, but not locked; anybody could take it off; at other times there was a wooden latch.

Being re-examined for defence, witness stated that the fence spoken of first was the only line fence; there was but one boundary fence—that running across to Eastern Bay; the others, of which he spoke on cross-examination, were field fences. Recollects the land some time before he bought his farm. Was at Hopkins' once; was then not quite grown. Samuel A. Chew lived at the place where he died; never saw it surveyed;

comprised at least 400 acres. Lowman Chew died in Baltimore; the place was rented out.

On being again cross-examined, stated the place where Samuel A. Chew died contained 400 acres; witness', about 241 acres; Murphy's, 400 acres; they constitute all the land north of the fence belonging to Kent Fort Manor. If I stated that the other fence, which laid off fields, connected with any other fence, I made a misstatement. The said division fence goes until it meets another creek which enters Eastern Bay. There is cultivation both sides of the first fence.

The defendants then offered in evidence the testimony of William Tanner, who stated that he is not the defendant. Has known Kent Fort Manor since 1833 or 1835, and is tolerably familiar with it; resides 12 or 14 miles off; first knew the place in Mr. Hopkins' time; Mr. Chew then occupied the farm he died on; never lived on any other that witness knows of. The Cray tract was then held by Embert, who occupied
73 as a tenant under Mr. R. Cray; can't say positively what that year was—about 1835 or '6. Chew's farm joined Embert's; the division line ran from a branch on N. W. Creek a little south of east to Eastern Bay; the creek makes in from the bay just west of Chew's place; a narrow stream, 20 feet wide, there expanded into a creek, commenced branching southeast and northeast—northeast to Dr. Carter's—then the northern line of the manor commenced and ran east; the southern arm ran southeast, and then turned east; just at its termination a fence ran across to the southeast, to Eastern Bay; Chew's whole water-front was on the creek. The Bright and Murphy farms were east of the Chew house; (looks at plat) according to witness' recollection the division fence, if any difference, terminated then a little further south than this on the plat; the fence has been there since I knew the place; the line on the plot, judging from the proximity, should be put further south; it has been unchanged since witness first knew it; an easterly line would go considerably north of the line on this plot. When I first knew the place, Cray lived with his tenant; he was not then married. I was very familiar with the line the fence ran; Cray's tenant cultivated up to it on the one side; Chew up to it on the other.

Being cross-examined, witness said that Northwest Creek is not a considerable creek. As the property is held, the creek forms the water-line from north of Chew's place to the fence, $\frac{1}{2}$ or $\frac{3}{4}$th of a mile; it then extended south about $\frac{3}{8}$th of a mile; altogether, there was about a mile of water-front. There is a little marsh from where the water terminates to the mainland. Thinks running a line due east to Middle Creek would be a little shorter, but is not prepared to say; it would take off
74 right smart land. In witness' memory great changes have taken place in water-courses; mouths of creeks fill up as land washes.

By the judge:

When I first recollect, cannot say whether the division fence was a new or an old fence; from its appearance it might have been put there 8, 10, or 12 years before I saw it; it was a bank fence; all the fences on Chew's property were put up pretty much that way.

The counsel for the defence then offered in evidence the testimony of Wm. Godwin:

Am 71 years old; have known Kentfort Manor since I was 11 years old; I then worked there; knew old Mr. Rob't Tait; my uncle was his tenant; he married Mr. Arthur Bryan's sister, Susanna Bryan; my uncle

was John Cook; Bob Tait, the younger, and I were playmates; my uncle became tenant two or three years after I first worked on the place, and then I worked with him. I was there during the war, when the British landed on the island. When Sam'l A. Chew took possession of the place on which he died, it was all a common to the north of Tait's place; he boarded at Gibson's till he built a house; that was upwards of forty years ago; he built his house on the farm where he died, near Chew's Creek, now N. W. Creek; never heard it called N. W. Creek till I came here. We (my uncle and myself) moved away after the British camped there, in the Christmas of that year. I lived on Sam'l A. Chew's farm and carried it on as his overseer one year, about 35 or 37 years ago. After old Mr. Tait's death Bob Tait succeeded; then Dr. Cray; then Hopkins, as tenant; Jim Embert was tenant of Rich-
75 ard Cray; Cray's widow now holds the property. The fences have been moved; when I first knew the land the division line ran from a cove on Northwest or Chew's Creek about southeast to a cove on Scaffold Point Creek, on Eastern Bay, eastward of south; it was a short line; that was before Samuel A. Chew came there to live; there was afterwards a change; I don't recollect when; it was when S. A. Chew and Bob Tait were living there. I lived on the Tait farm the year after I lived on Chew's as his overseer, and was overseer on Tait's farm for Hopkins; this was over 35 years ago. The fence was moved a little further south; Tait & Chew made it run a little further to the south than before; they took off land from Tait; previous to that there was no fence where it is now; they then put the present fence there; it ran south of the old fence, between two old fences; this was near forty years ago; the line has not been changed since then; both Chew and Tait recognized this as the boundary line between them. I lived on Chew's farm one year and on Tait's the next year, and the land was cultivated on both sides up to the line fence.

Cross-examined:

Chew always spoke of the present fence as the line fence; I cannot give his words; I don't know if they had a surveyor, and did not see them put it up, but I heard Chew say they had made this division, he and Tait, between them; he said it was changed as a line; I cannot give his words; cannot say how much land was taken from Tait. Witness was asked by plaintiff's counsel if it was more than one acre, less than 100 acres, and he said it was more than one and less than 100. There was a gate in the old fence, and in the new one also. Chew did not live on the place when I first went there; Chew's place (where
76 Chew died) was then a sedge field. The two lines of fence (the original and present lines) began on the west, near each other; the change is in the course. I knew an old man named James Bryan; he was no relation to Cray or Tait; he was a ground renter, and lived on Kent Island; don't know whose tenant he was; he was a brother of William Bryan; Wm. Bryan said he was a tenant of the Chews before the war. James Bryan held—(Def'ts' counsel objects to statements of Bryan. Court limits their extent to Bryan's own holding.) I did not know Bryan to say who he paid rent to; I merely heard; never heard Chew speak of Bryan; I saw Bryan on the mainland; never saw him on Long Point farm; I saw old James Bryan—no, can't swear I saw him, merely hearsay; I didn't know James Bryan, nor the house he lived in; the house went to ruin because nobody lived there. On the eastern side the first division fence struck Scaffold Point Creek, not near Long Point; can't tell how far; the first creek below Long Creek was Greenwell's Creek; then

came Scaffold P't Creek; the line didn't come to Grenwell's Creek, but ran from Scaffold Creek direct to Chew's, or N. W. Creek.

Further examined in chief, the witness testified: Mr. Sam'l A. Chew said he and Tait had made the division fence between them. He frequently talked with me, as his overseer; he always claimed it as the division fence, and so it is to this day. When I first went to the southern farm, it was in cultivation for old Mr. Tait up to the boundary. There was no cultivation to the north of it till Samuel A. Chew came there, upwards of forty years ago. He (Chew) always claimed the fence as his line fence.

The counsel for the defendants then offered in evidence the testimony of Henry C Legg, one of the defendants:

77 Tanner and I succeeded to Murphy's title, and now occupy the farm sold to him by Sam'l A. Chew. Scaffold Point Creek is south of Greenwell's Creek, and south of the present division fence. I have known the property 17 years; lived on Chew's place seven years. The division fence has been where it is ever since I have known the property.

On cross-examination stated: If the original fence ran from Scaffold Point Creek to Northwest Creek, it must have been south of the present fence. The present is a shorter line than that to Scaffold Pt. Creek, and requires less fencing. Northwest Creek is usually called Chew's Creek.

Mr. Godwin, being recalled by the defense, states, by way of explanation of his previous testimony, there were originally two lines of fence running across to Eastern Bay from Chew's Creek; one which ran to Greenwell's Creek, the other to Scaffold Point Creek. The new one, made in Sam'l A. Chew's time, and which he said was the division fence between him and Tait, ran between the two old ones, & struck Eastern Bay at a point between Greenwell's Creek & Scaffold Point Creek. This change was made more than forty years ago, I think. I don't know how long Sam'l A. Chew had been there when it was made. The old fence was there before I first went to the island, & was there when I first left it. After this the present line fence was put up during my absence, and when I came back as Chew's overseer the fence was there as at present.

(The defendants then offered to prove, by reading from one of the bills of exceptions taken at the former trial, that the plaintiff had then proved,

78 by William Grason, a witness for the plaintiff, "that Samuel A. Chew had told witness that the division fence between him and Robert B. A. Tate, who was then in possession of the southern half of the land in dispute, had been altered for his (Chew's) accommodation, and that south of that fence was Tate's land." And the defendants proved that said Grason was too infirm and ill to attend personally & testify. But the plaintiff objected, and the court refused to allow the said evidence to be read to the jury because it did not appear that said testimony had been given by Grason on his examination in chief, and the defendants reserved an exception to said ruling.)

The plaintiff then offered as rebutting proof the evidence of Eliza C. Deery, the plaintiff's lessor, to the effect that in the year 1840 she was on a visit to the house of Samuel A. Chew, who was then living on the farm called the "Chew farm" by the witnesses, being that on which said Chew died, and whereof Lowman Chew died seized & possessed; and that in a conversation concerning Kent Fort Manor, said Chew declared to witness that the whole of Kent Fort Manor belonged to the heirs of

Samuel L. Chew, his father, if they had their rights. But the defendants objected to the admissibility of said declarations, except in so far as they might qualify the possession of said Chew of that part of Kent Fort Manor of which he was at the time possessed. And the court, upon said objection, ruled that the said declarations of Samuel A. Chew could only be given in evidence to qualify or explain the possession of or title to that part of Kent Fort Manor described by the witnesses which said Chew had in actual possession at the time of said declaration made; and allowed said declaration to go to the jury to that
79 effect & extent only, but excluded said declarations so far as they tended to show his claim to the whole manor.

To which ruling of the court the plaintiff excepted; and this, her bill of exceptions, is accordingly signed, sealed, & enrolled this 28th day of April, 1868.

WILLIAM F. GILES. [SEAL.]

Plaintiff's fourth exception.

And thereupon, and after the happening of the matters & things in said last bill of exceptions mentioned (which is made part hereof), the defendants further offered in evidence the deed of mortgage following:

QUEEN ANNE'S COUNTY, *to wit*:

Be it remembered, that on the tenth day of February, in the year of our Lord one thousand eight hundred and sixty-three, the following deed of mortgage was brought to be recorded, to wit:

This mortgage, made this 7th day of February, eighteen hundred and sixty-three, between Eliza C. Deery, now of the city of Baltimore, & Otho Scott, of Harford County, witnesseth that the said Eliza C. Deery, in consideration of the sum of eleven hundred dollars advanced to her by the said Otho Scott, hath granted, & doth hereby grant, unto the said Otho Scott & his heirs all her undivided interest & estate in & to a tract of land lying in Queen Anne's County, and containing six hundred acres, more or less, & being the same land & all the lands of which Lowman A. Chew, a lunatic, died seized, the said Eliza being one of the heirs of said Chew, provided that the said Eliza, or her heirs, pay
80 to the said Otho Scott the above-mentioned sum of money three year after the date hereof, with interest thereon from this date, & also all taxes & public dues which may be assessed on this mortgage; then this mortgage to be void.

Witness my hand & seal.

ELIZA C. DEERY. [SEAL.]

Witness: P. T. WILSON.

[United States—two dollars, mortgage—intr. revenue. 7th February, 1863.]

STATE OF MARYLAND, SS: *Baltimore City, to wit:*

On the 7th day of February, eighteen hundred & sixty-three, came before me, the subscriber, a justice of the peace in and for said city, the within-named Eliza C. Deery, and acknowledged the foregoing deed of mortgage to be her act; & also, at the same time, came John O. Wharton and made oath, on the Holy Evangely of Almighty God, before me, a justice as aforesaid, that the consideration stated in the aforegoing mortgage is true & bona fide as therein set forth; & also made oath, as aforesaid, that the was authorized by the said Otho Scott to make this affidavit as his agent.

Inter. revenue, ten cents, int'd exchange. O. S., Feb. 7, 1863.

Acknowledged & sworn before me. P. T. WILSON.

STATE OF MARYLAND, *Baltimore City, set:*

I hereby certify that Peregrine T. Wilson, esquire, before whom the annexed acknowledgment and affidavit were made, and who has thereto subscribed his name, was, at the time of so doing, a justice of the peace, of the State of Maryland, in and for the city of Baltimore, duly commissioned and sworn.

Inter. revenue ten cents, certificate. G. E. F. Feb. 7, 1863.

In testimony whereof, I hereto set my hand and affix the seal of the superior court of Baltimore City this seventh day of February, A. D. 1863.

GEO. E. SANGSTON,

[SEAL: SUPERIOR COURT FOR BALTIMORE CITY.]

81 *Clerk of the Superior Court of Baltimore City.*

STATE OF MARYLANDS, *Queen Anne's County, to wit:*

I hereby certify that the above is truly copied and taken from Liber M. B., No. 2, folio 242, one of the land-record books for Queen Anne's County.

In testimony whereof, I hereto subscribe my name and affix the seal of the circuit court for Queen Anne's County this 25th day of April, A. D. 1868.

JAMES WOOTERS,

Clerk of the Circuit Court for Queen Anne's County.

[Seal's place; & int. rev. stamp, 5 cents.]

And the testimony then being closed, the plaintiff offered the following prayers:

Plaintiff's prayer No. 1.

The court instructs the jury that the plaintiff has shown a prima facie title in herself to an undivided one-fifth part of the residue of Kent Fort Manor which remains after deducting the portions thereof included in the two deeds of Samuel A. Chew, read in evidence, and the portion of land sold by John M. Robinson, trustee, as also read in evidence, provided the jury find the truth of the parol evidence as offered by the deposition of Kensey Harrison, now deceased, and by the plaintiff as a witness in this cause, as to the pedigree of her family; & provided the jury find the pedigree of the Brent family to be as stated in the special verdict in the case of Brent vs. Tasker read in evidence.

Plaintiff's 2nd prayer.

That there is no sufficient legal evidence of the location or running of the line described in the deed from Samuel L. Chew to Elizabeth
82 Chew, read in evidence by the defendants; and the said deed is, therefore, not to be considered as operative to convey any portion of Kent Fort Manor; & the jury cannot presume any valid legal conveyance from said Samuel L. Chew to said Elizabeth, or her grantees, if the jury believe from the evidence that the possession of the property now in controversy, and not included in the deeds to Bright & Murphy & the sale by J. M. Robinson, trustee, was held & is still held and claimed alone under the aforesaid deed from Sam. L. Chew to Elizabeth Chew, & the conveyances derived from her, as read in evidence.

Plaintiff's 3rd prayer.

If the jury cannot find from the evidence by whom or when the straight

fence running across the island from Northwest Creek was erected, but that the same is on the line of partition as alloted to Susanna Tate in 1802 in the partition of the estate of Arthur Bryan, and if the jury further find that there was another fence, of equal antiquity with said straight fence, which begins, also, at Northwest Creek near by to said straight fence, and runs thence south, at first, & then east across said island, & strikes the water on the eastern side at a point south of the said straight fence, then there is no sufficient legal evidence that either of said fences is on the line called for & meant to be described in said deed of Samuel L. Chew to Elizabeth Chew; & the jury cannot, upon the evidence in this cause adduced, find the true location of said line in said deed, or give the said deed any effect or operation as a legal conveyance.

Plaintiff's 4th prayer.

83 If the jury believe from the evidence aforesaid that the straight fence across the island has always been passed through by a gate & a road, & that said gate was not kept locked or secured, & access could be had through said gate & over said road by all persons (desiring to go on the lands lying to the south of said fence), including the ancestors under whom the plaintiff claims; & if the jury further find that the part of Kent Fort Manor lying north of said fence was never possessed or claimed adversarily to Samuel A. Chew, & those under whom he claimed, until the execution of his deeds to Bright & Murphy, & then only to the extent of the lands thereby respectively conveyed; and if the jury further find from the evidence that from the want of complete enclosures by fencing around the southern portion of said manor, and the shallowness of the water in the bay at the eastern termination of said straight fence on the fast land, a water-fence was run from the eastern terminus of said fence into the water, and if the jury find from the evidence aforesaid that said water-fence was temporary and imperfect, & liable to be carried away, & was carried away by ice so that it did not remain as part of a substantial enclosure of or protection to the lands lying south of it uninterruptedly at any time for twenty years in succession; and if the jury further find that during all the time when said water-fence was kept up the lands lying south of said straight fence were accessible by stock & cattle having ingress and egress around said water-fence in low tides from the northern portion of said manor, then said straight fence, with said gate, road, and water-fence, was not a sufficient enclosure of the lands lying south of it to constitute an adverse possession for twenty years.

84 *Plaintiff's 5th prayer.*

That from the deeds offered in evidence by the defendants the jury must find that the plaintiff is entitled to recover an undivided fifth part of the half acre used as a graveyard, and excepted from the deed from Samuel L. Chew to Elizabeth Chew, offered in evidence by the defendants, & under which they claim; and if the jury find said half acre to be in the possession of the defendant, Mrs. Martha Cray, then the jury must find a verdict against her for an undivided fifth part of said half acre.

Plaintiff's 6th prayer.

If the jury find that the fence now standing across the island was removed more than forty years ago to its present site, & that previously

no fence was existing on its present site, then there is no sufficient legal evidence that the said fence as now standing is on the line referred to in the deed of Samuel L. Chew to Elizabeth Chew, read in evidence, and said deed cannot be supported by reason of the existence of said fence.

Plaintiff's 7th prayer.

If the jury find from the evidence aforesaid that the present fence across said island was established between Samuel A. Chew & Robert Tate, jr., as stated in the evidence, & that the same was so established for their mutual convenience & to save a longer line of fence, & not as & for the location of the line called for in said deed to Mrs. Elizabeth Chew from Samuel L. Chew, then the erection of said fence is no sufficient evidence of the location of said line in said deed.

And the defendants offered the following prayers:

85 *Defendants' 1st prayer.*

That the deed from Beatty & wife, and Schnebly & wife to Samuel A. Chew, bearing date the 26t of October, 1821, which has been given in evidence on the part of the defendants, transferred to said Chew the entire interest of the mother of the plaintiff in "Kent Fort Manor," and the plaintiff can have no claim of title to said tract, or any part thereof, except as one of the heirs at law of Lowman Chew, the son of said Samuel.

Defendants' 2nd prayer.

That said Lowman Chew had no interest in the said tract during his life, or at his death, except what he derived from his father, Samuel A. Chew, & the said Samuel having conveyed the Long Point farm to Thomas Murphey, and the Green Creek (or Indian Creek) farm, parts of said tract, to James Bright, junior, by the deeds to that effect, which have been offered in evidence on the part of the defendants, the defendants John Bright, Henry C. Legg, & Thomas Tanner, who have taken defence for the two said farms, are entitled to a verdict accordingly.

Defendants' 3rd prayer.

That as to the lower or southern moiety or portion of said tract, for which Martha Cray, Thomas Palmer, & James Goodhand have taken defence, the said defendants are entitled to the benefit & protection of the deed from Sam'l L. Chew to Elizabeth Chew, of October 22d, 1787, which they have produced in evidence, and under which they claim, provided the jury shall find that during the life of said Samuel L. Chew, or after his son Samuel A. Chew acquired the interest of his sisters in the said tract of Kent Fort Manor, in 1821, and before the death
86 of said Samuel, & more than twenty years before this suit was brought, a division line, or fence, or boundary was established between the said lower part or moiety, & the upper part of said tract by the common consent, or with the common acquiescence, of said Sam'l L. Chew, or said Sam'l A. Chew, and the said Elizabeth Chew, or those claiming under her, and that said line, fence, or boundary was so established, & was recognized by & between said parties, as and for the northern or upper line of the lands intended to be conveyed to said Elizabeth by said Sam'l L. Chew, by the deed aforesaid, and has thenceforward and for more than 20 years before this suit was brought, so continued to be, & that possession has been ever since continuously held by

the parties possessing & claiming title to said lands in recognition of, and in conformity with, said division, on both sides of said line, fence, or boundary; and if the jury so find, then the said defendants, Martha Cray, Thomas Palmer, & James Goodhand, are entitled to a verdict accordingly.

Defendants' 4th prayer.

If the jury shall find that the said defendants, Cray, Goodhand, & Palmer, & those under whom they claim, have held the lower portion or moiety of Kent Fort Manor, for which they have taken defence by continuous, exclusive, & adversary user and possession, with enclosure, under claim of title according to its present boundaries for more than 20 years prior to the institution of these proceedings, & from a date prior to the death of Sam'l A. Chew, then the jury must find a verdict for said defendants.

Defendants' 5th prayer.

87 If the jury shall find the execution & delivery of the deed of mortgage from the plaintiff to Otho Scott, which has been given in evidence by the defendants, then the plaintiff had thereby parted with her legal title (if any) to the real estate on Kent Island whereof Lowman Chew died seized, prior to the institution of this suit, & is not entitled to recover.

Defendants' 6th prayer.

That if the jury shall find the execution & delivery of the deeds given in evidence by the defendants, and shall further believe the witnesses who have testified on the part of the defendants, then such evidence, with the plat offered in evidence by the plaintiff, is legally competent to justify the jury in presuming that the line called for by the deed from Samuel L. Chew to Elizabeth Chew, to be run & ascertained by Thomas, was actually run & ascertained by him, provided the jury shall from such testimony think proper so to find.

Defendants' 7th prayer.

That the plaintiff is not entitled to recover in this case (apart from all other reasons), because it appears by her mortgages to Scott & Robinson, & the proceedings in Queen Anne's County circuit court, which have been given in evidence, that she had not, at the time of bringing this suit, and has not now, the legal title to the real estate whereof Lowman Chew died seized.

And thereupon the plaintiff's counsel admitted the correctness of the first & second prayers of the defendants, which the court accordingly granted upon such admission, and the plaintiff's counsel further admitted & declared that the plaintiff had no claim against, or contro-
88 versy with, the defendant Lane, who, at the institution of this suit, was tenant in possession of the farm called the Chew Farm, of which Lowman Chew died possessed. Thereupon the court refused the instructions prayed by the plaintiff, and granted all the remaining prayers of the defendants, except the 7th, which the court refused. Whereupon the plaintiff excepts to the court's refusal to grant each & every of the plaintiff's prayers, and to the granting of the defendants' prayers and each and every of them so as aforesaid granted (except the

first and second, which were admitted as aforesaid), and the plaintiff claims the same benefit of exception as if each ruling of the court on said prayers excepted to were separately excepted to in distinct bills of exception.

And this, her bill of exceptions, is accordingly signed & sealed & enrolled this 28th day of April, 1868.

WILLIAM F. GILES. [SEAL.]

And now here, at this day, to wit, on the seventh day of May, in the year of our Lord 1868, the said Eliza C. Deery's lessee produced to the said circuit court here the writ of the United States of America, for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid, of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA *ss:*

89 The President of The United States of America, to the judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, greeting:

{ SEAL'S } { PLACE. } Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court, before you or some of you, between Eliza C. Deery's, lessee plaintiff, and Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, defendants, a manifest error hath happened to the great damage of the said Eliza C. Deery's lessee, as by her complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable S. P. Chase, Chief Justice of our Supreme
90 Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued the 7th day of May, 1868.

JAMES W. CHEW,
Clk Circuit Court.

In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Citation.

91 The United States of America to Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, & Thomas Lane, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office, in the circuit court of the United States for the fourth circuit, in and for the Maryland district, wherein Eliza C. Deery's lessee is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Eliza C. Deery's lessee in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the said parties in this behalf.

Witness my hand and seal this 7th day of May, in the year of our Lord one thousand eight hundred & sixty-eight.

WILLIAM F. GILES. [SEAL.]

MAY 8, 1868.

Service admitted.

WALLIS & THOMAS,
Att'ys for all Defendants but Lane.

(Indorsed:) Deery's, lessee vs. Cray & others. Citation. Service acknowledged.

92 *Writ of error bond.*

Know all men by these presents that we, Robert J. Brent & R. H. Carr, are held and firmly bound unto Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, & Thomas Lane, in the full and just sum of three hundred dollars lawful money of the United States, to be paid to the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, & Thomas Lane, or their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, finally by these present.

Sealed with our seals, and dated this 7th day of May, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas, at the circuit court of the United States for the fourth circuit and district of Maryland, begun and held at the city of Baltimore, on the first Monday of April, in the year of our Lord one thousand eight hundred and sixty-eight, the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, recovered their judgment against the said Eliza C. Derry, for their costs and charges by them about their defence in that behalf laid out and expended; and whereas, the said Eliza C. Derry hath sued out the writ of the United States of America, for the correcting of errors, and a citation directed to the said Marth Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, & Thomas Lane, citing and admonishing them to be and appear at a Supreme Court of the United States to be held at the city of Washington, on the first
93 Monday in December next, to show cause, if any there be, why the judgment aforesaid, so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties aforesaid in this behalf:

Now, the condition of the aforegoing obligation is such, that if the said Eliza C. Deery shall well and truly prosecute with effect her said writ of error, and pay unto the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, & Thomas Lane,

their heirs, executors, administrators, and assigns, their costs and charges aforesaid, adjusted unto them by the said circuit court, and also all such damages, costs, and charges as may be awarded unto them by the said Supreme Court, in case the said Eliza C. Deery shall fail to make good her said plea, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

ROBERT J. BRENT. [SEAL.]
R. H. CARR. [SEAL.]

Signed, sealed, and delivered in presence of—
ERASMUS B. HITZEL.

In testimony that the aforegoing is truly taken from the record of proceedings of the circuit court of the United States for the fourth circuit, in and for the Maryland district.

94 { SEAL'S PLACE. } I have hereunto subscribed my name and affixed the seal of the said circuit court this 2nd day of January, anno Domini 1869.

IN THE

Supreme Court of the United States.

DEERY'S LESSEE

vs.

CRAY, Et Als.

BRIEF OF PLAINTIFF IN ERROR.

This Case was once before in this Court, (5 Wallace Rep. 795,) when on appeal by the present Appellant the judgment of the Court below was reversed on points not decisive of the case, with directions to award a new trial.

At the new trial, the Plaintiff read in evidence to the jury certain documentary evidence rejected at the former trial and contained in the former Record. By agreement of Counsel (page 3 of the present record) certain testimony may be read from said former Record.

This Evidence consists of:

1st. A patent from the Lord Proprietor to Giles Brent, dated 7th Sept. 1640. (Former Record, page 8.)

2d. Agreements of Counsel. (Former Record, pp. 10, 11.)

3d. The special verdict in the case of Brent's Lessee *vs.* Tasker, 1 Harris & McHenry's Reports, 89, showing the title to be in William Brent, by descent, in 1738.

4th. Extract from Debt Brooks, (former Record, page 11,) showing William Brent in possession in 1767.

5th. A Deed from the Executors and heir at law of William Brent to Samuel Chew, dated May 28th, 1785.

Former Record, pages 11–14.

6th. The will of Samuel Chew or Samuel L. Chew, offered for probate July 29th, 1786, whereby he devised said property to his wife, Elizabeth Chew, for life, and after her death to his son, Samuel Lloyd Chew, and his heirs, forever, in fee-simple,

Former Record, pages 15, 16.

7th. The deposition of Kensey Harrison, now deceased, showing that Samuel Chew, or Samuel L. Chew, the elder, died in 1786, that Samuel Lloyd Chew, the younger, died about 1796 or 1797, intestate, that his only existing heirs at law are the descendants of his daughter Elizabeth, (married first to William Deery about 1797, and afterwards to Elie Beatty, about 1809,) and Henrietta, who married Henry C. Schnebly.

Former Record, pages 19, 20.

8th. The plat mentioned in the agreements.

Former Record, pages 10, 11.

The Plaintiff's Lessor then proved that there were three branches of the heirs of Samuel Lloyd Chew, the younger, the devisee in remainder aforesaid, viz: the late Samuel A. Chew, the Plaintiff's Lessor, and her half-brother, who were children of a daughter of Sam'l Lloyd Chew, Junior, and the children of Mrs. Henrietta Schnebly, the remaining daughter of said Samuel L. Chew, Jr., showing thereby that the Plaintiff's said Lessor is heir to one-sixth of the estate of Sam. Lloyd Chew, the younger. That Mrs. Elizabeth Chew, the devisee for life, died about 1807. That the mother of the Plaintiff had, as far back as 1809, intermarried with her second husband, Elie Beatty, by whom she had one son, Ed-

ward Beatty, who died prior to July 1862, leaving children. That the Plaintiff's mother died in 1839, leaving her said second husband, Elie Beatty, surviving her until 1859, when he died, some four years before the institution of this suit. That Samuel A. Chew died in 1842, leaving a lunatic son named Lowman Chew, as his sole heir at law, who died in August, 1862, intestate and without issue.

Page 4.

This evidence shows (what we were not allowed to show on the first trial) a regular chain of paper title from the Patentee down to the Plaintiff's Lessor, whose title in right of her mother would be to one undivided sixth part of the whole of Kent Fort Manor, and as heir of Lowman Chew, (who died in August, 1862, after the death of Plaintiff's half brother,) she would be entitled to one-half of his third part in preference to the children of her deceased brother, who died before Lowman Chew.

1 Maryland Code, p. 333, sec. 27.

This presents our *prima facie* case perfect on its face.

The Defence appears to be based on two theories: first, that the Defendants have the valid paper title to the southern half the Manor; second, that the claim of the Plaintiff, if otherwise valid, is barred by an adverse possession of more than twenty years.

We will accordingly consider the defence under these two heads.

First Point.—The Defendants have not shown any paper title in themselves, except to those portions of the Manor conveyed by the deeds of Samuel A. Chew to Murphy for "Long Paint Farm," 461 acres, and to Bright for 296 acres.

Record, pages 15, 16, 17, 18.

These farms, amounting to about 1157 acres of the Manor, we renounced all claim to recover, as on the trial the whole Chew title was conceded to be in Samuel A. Chew.

Record, pages 44 and 45.

The First Exception shows that after reading in evidence a mortgage from Samuel L. Chew, Jr. to Charles Carroll, (which in the progress of the cause was shown to be released, see pages 8 and 5,) then offered to read a deed from said Samuel L. Chew, Jr. to Elizabeth Chew, dated 22 October, 1787, and the Court having admitted said deed, we excepted.

We submit that the qualified terms of the admission cannot cure the error of admitting it in evidence.

This deed is omitted, but will be found with other documentary evidence in the Appendix to this Brief, as agreed by Counsel.

This deed professes to be from Samuel Lloyd Chew, Jr., the devisee in remainder of Kent Fort Manor, under his father's will, and to convey to Elizabeth Chew, his mother, who was tenant for life under the same will, "all that moiety or half part of Kent Fort Manor, being all that part which lies to the south-westward of a line Beginning on Northwest Creek, and running an easterly course, agreeable to the plot of said land made by William Brown of Anne Arundell County in such manner as to comprehend one-half of the number of acres of the whole tract, the said line is to be run and ascertained under the direction of John Thomas of Anne Arundell County, the burying ground where Samuel Chew, Esq., deceased, father of the grantor, is interred, containing half an acre is excepted."

We objected to this deed being read in evidence, because it was incomplete and uncertain on its face, and required proof where the important *easterly line* described was to be run, and its beginning.

It may be doubtful whether the plot of William Brown referred to, contained this easterly line, south-west of which the granted land was to lie, or whether said plot was merely Brown's Plot of the entire Manor, out of which John Thomas was to run a dividing line.

First.—If we assume that the seperating and essential line was marked on Brown's Plot, and had already been

run and located, leaving on its south side precisely one half of the acres in the whole tract, and that this pre-existing line was merely to be run out and ascertained by John Thomas, so as to avoid all dispute touching its location, then we confidently maintain that the Court was in error in admitting the deed before the plot of Brown, so indispensable to its location, was produced and identified, or if lost, its contents proved by secondary evidence. The Defendant, while offering his paper title in evidence, is to be assumed to rely on it exclusively "*pro hac vice*," and therefore its admissibility is to be tried as if the deed were executed recently.

The Maryland authorities require this proof of all lines called for in the deed, because it is a material part of the deed, without which its legal operation cannot be determined, and they are equally conclusive against the reservation by the learned Judge, to the effect that the Plaintiff might "move to exclude the same hereafter, if upon closing of the testimony it shall not have been legally and sufficiently applied by Defendants to the maintenance of the issue on their part," by which we understand the Judge to mean that the deed should go in evidence, without proof accompanying its introduction, to show where the granted premises were located. If by this the learned Judge meant that the jury might presume the location of this essential line of the paper title upon proof of subsequent holdings or possession, the Maryland authorities solemnly condemn such a ruling. Whatever they may be in other States, the land laws of Maryland are stringent and technical.

These principles are fully discussed and settled by the Court of Appeals of Maryland in the leading case of Hammond *vs.* Norris, 2 H. & J. 130.

A critical analysis of this case is necessary to show how conclusive it is on the question now presented.

The case of Hammond *vs.* Norris involved the admissibility of a deed from John Howard to Philip Hammond, dated 27

Sept. 1753, for two parcels of a tract called "Woods' Inclosure," "one parcel containing 86 acres, the other 94 acres, sold to John Howard by Joseph Wood, as by deed duly made and recorded in the records of Frederick County, appears the said two parcels of land, being also what the said J. Howard's dwelling plantation is made upon."

Page 130, 131.

The deed having been read, because located on the plats and not counter-located, the Defendant at first objected to it as a valid deed of mortgage, unless the mortgagor's title was deraigned, but this objection was overruled.

Page 131.

In pages 146 and 147, the Court rejected the deed as a title paper because "it did not sufficiently specify the land, but referred for its description or bounds to another deed, which could not be found."

The Court held, that the deed did not define the 86 acres by any courses or distances, there is therefore nothing in it whereby any locatable land can be conveyed, and of course passes nothing, and passing nothing it cannot be evidence. Nothing but the deed itself can prove the location of the land."

The Court then held, "that the deed from Howard to Hammond was not legal evidence to show title in Hammond, without producing the deed from Joseph Wood to John Howard, to which the deed from Howard to Hammond doth refer to ascertain and identify the 86 acres intended to pass by the same; and that the deed is inoperative to pass the same without producing that deed. The Court therefore refuse to suffer the same to be read to the jury."

This ruling was unanimously affirmed by the Court of Appeals. Page 151.

Now this is our very case, the only difference being that the deed in Hammond *vs.* Norris was unlocatable and inoperative without producing the lost deed which was referred to for the boundaries of the past. This difference does not

affect the principle, which rejects a deed which is unlocatable on it face, except by reference to another document which is not produced. Here, looking at this deed of Samuel L. Chew to Elizabeth Chew, no one can say how the easterly line was or should run, without producing the plat of Brown, and showing its location thereon, or producing proof where John Thomas ran his line, if he ever did run it. Tradition is evidence of boundaries, but here there is no primary or secondary or traditional evidence of that boundary line. As it stands on this record, the Court has admitted an unlocatable deed.

The principle of the case of Hammond *vs.* Norris and the case itself has been more recently recognized and confirmed in Maryland.

In Blessing *vs.* House, 3 G. & J. 291, a deed conveying part of a tract without giving metes and bounds, referred to a will for the description, and the will described the part as 100 acres of "'the Old Cabin Farm,' &c., to be laid off by the executors."

The Court held that the deed was void for uncertainty, because it did not appear that the executors had laid off the quantity. 3 G. & J. 307.

In page 308, the Court expressly adopt the case of Hammond *vs.* Norris as binding authority.

This Court fully approved the same principle in 18 Howard, 153.

These cases in Maryland are but emanations of the common law principle laid down in 2 Thomas Coke, 241, side paging, that the office of the premises, *inter alia*, is "to comprehend the certainty of the lands or tenements to be conveyed either by express words or which may by reference be reduced to a certainty."

A still later case in the Court of Appeals decides that a reference to another deed for boundaries makes the deed referred to a part of the deed. 17 Md. 134.

And in 1 H. & Gill, 438, the same Court decided that a deed for a given quantity part of a tract and without bounds is void unless it can be supported on the principle of election—nor can extrinsic evidence support it.

The principle of election thus referred to is inapplicable to this deed, where the line is to be run by a third party, it being analagous to the case above cited of

Blessing *vs.* House, 3 G. & J. 307.

Even where the grantee may enter and elect the part he will take, he must so elect in his life-time.

13 Johns. 528.

But where the act of a third party is necessary to perfect the grant it fails unless the act is done, which is in this case a condition precedent to determine the division of this Manor into two parts, nor is there any right of election where the grantor intends to describe the land or there is a patent ambiguity.

7 G. & J. 246.

On its face the deed is defective and incomplete, without proof of the identical line called for, and it is the same as if no boundaries were given for the part proposed to be granted.

Miller *vs.* Smith, 33 Penna. St. R. (9 Casey) 386-394.
Holly *vs.* Curtis, 3 How. (Miss.) 230.
13 Smedes & Marshall, 323.
Fenwick *vs.* Floyd, 1 H. & J. 174.
Budd *vs.* Brook, 3 Gill, 198.

No possession under this imperfect deed can supply this necessary paper muniment called for in the deed as part of it, or found a presumption while the defective deed is in evidence.

2 H+J. 96 + 107
6 H. & J. 336, 347, 348, 351.
~~1 Gill, 436.~~
20 Md. 395.

In Hammond *vs.* Norris, 2d H. & J., 143, the party claiming title to the 86 acres, the true location of which could only be ascertained by the lost deed referred to, sought to satisfy the jury where the lines ran by showing a long possession held of the 86 acres meant to be conveyed by J. Howard to Hammond by the deed of 1753.

He proved that the land patented as Woods lot had acquired the name of Wood's Inclosure; that the 86 acres claimed under that deed had been held by P. Hammond, the grantee in that deed, and those claiming under him from its date, 1753, and his devisees, in 1779, had deeded the 86 acres by specific boundaries, and then a continuous possession under that deed by those boundaries.

But the Court (page 147) held that all this powerful array of facts and long possession and chain of deeds describing the metes and bounds of the 86 acres were insufficient to prove the lines of the deed of 1753 or supply any presumption of the lines of the lost or unproduced deed referred to.

It is a patent ambiguity until the call is shown, and holding under it will not help the deed, as no subsequent holding can demonstrate the location of a line which must locate itself by its own description.

1 H. & G., 438.
33 Penn. St. R., 394–5.

Second.—If the line had never been run or located on Brown's plot, and was to be run by John Thomas so as to divide the whole manor tract as surveyed by W. Brown into two equal parts in quantity, beginning at some point to be selected by John Thomas on North West Creek, and run thence an easterly course by him in such manner as to throw one-half the quantity on the southwest side of this line to be run, then we submit that the deed is inoperative and defective until John Thomas has run the line; and he alone had the power upon the above authorities.

We shall therefore maintain that no separate holdings of the southern portion of the manor can amount to legal evidence of the line called for in the deed to Mrs. Elizabeth

Chew, since those holdings may have originated long subsequent to that old deed of 1787. It is leaving the jury to wander in too great a field of conjecture as to the beginning point or the true running of a line specified in that deed.

Even if possession could in any case be evidence, which we deny, to fix lines in an old deed, it should at least be shown that the line by which the separate holding was maintained in a long lapse of time did in fact divide the manor into two equal parts in quantity and was otherwise such a line as was called for.

We shall hereafter, when discussing the instructions of the Court on the whole evidence, demonstrate that the seperate holdings on that island could not have been by the line of partition contemplated in the deed of 1787, but is altogether a different line; nor is there any proof that there ever was a line of holdings seperating the manor into two equal tracts in quantity.

If this deed of 1787 did not call for a particular line which might be straight or crooked when run, so that it gave the quantity required on each side. then, as a deed for a moiety simply it would have made Mrs. Chew a tenant in common for an undivided half.

3 Preston Abstracts, 36 side pages.

But the same authority shows that, as used in this deed, it meant a distinct half in quantity to be laid off by a particular line.

Therefore Mrs. Chew never was tenant in common of the reversion ; and if she were she could not grant any separate portion of the estate.

4 Kent, 364.
1 H. & G., 435.

In conclusion of this exception we observe that the effort of the defendants to prove a paper title to any portion of the

manor but that deeded to Murphy & Bright fails, and they must stand if they can on their naked possession.

THE SECOND EXCEPTION, PAGES (4–8,)

Raises the question of the admissibility of the deed from Elizabeth Chew to Foreman.

See page 5.

This deed professes to convey "all that moiety of a tract of land called 'Kent Fort Manor,' which forms the southern extremity of Kent Island, which moiety the said Elizabeth purchased of her son Samuel L. Chew, devisee of Sam. Chew."

It seems to us clearly inadmissible upon the authorities cited under the first Exception, because it is wholly uncertain on the face of the deed which half part is intended; and assuming it to be at the southern extremity, there is no indication of the line or lines by which that half is to be ascertained, unless it can be first shown what she purchased from Samuel A. Chew, as in Norris *vs.* Hammond, 2 H. & J. 130.

THE THIRD EXCEPTION

Arises to the limit placed on the declarations of Sam. C. Chew under whom the Plaintiff claimed, as to the extent of his, (Chew's) claim made while in possession of part of Kent Fort Manor. Page 41.

It will be seen in page 46 that we made this offer to rebut parol evidence of the declarations of said Chew, limiting his claim to a fence which he and Tait had erected many years before the trial. The evidence which we wished to rebut was that of Godwin, who proved that S. A. Chew, about forty years before the trial (say in 1828), reclaimed some vacant sedge fields and built on them; that he was overseer for S. A. Chew 35 or 37 years ago; that the division fence between Chew's possessions and the land held by Tait does not run as it did when the witness first knew the land; that

this original fence ran from a cove on North West or Chew's Creek about southeast to a cove on Scaffold Point Creek on Eastern Bay, eastward of south. This was before Sam. A. Chew came there to live.

Record, p. 39.

He then states that the old fence was abandoned near forty years ago and a new fence run a little further south, which took off some of Tait's land; and this new fence has stood ever since where there was no fence before; that the new fence ran south of the old fence and between two old fences (of course one of these old fences was south of the present fence); that Chew and Tait recognized this new or forty-year old fence as the boundary line between them, and the land was cultivated on both sides up to that fence.

Record, p. 39.

On cross-examination he stated that Chew said he and Tait had made this division between them and it was changed as a line; that the two lines of fence, the old and new, began on the west near each other. The change is in the course.

Record, p. 39.

This proof is of an equivocal character touching the declarations of Chew, as Tait may have been his tenant, and this line established conventionally between the two farms. Why, then, should we not rebut these declarations by showing that in 1840, after the alleged declarations, the same S. A. Chew, while residing on part of the manor, declared "it belonged to the heirs of his father, if they had their rights."

1 Bailey 77
1 Johns. 163

1 Greenleaf Ev., sec. 107.
7 Wheat, ~~212~~. 105
4 McCord 262

THE FOURTH EXCEPTION

Involves the rulings of the Court on the prayers presented by the parties.

The first prayer of Plaintiff will ~~not~~ be relied on, as it assumes that the Plaintiff had ~~but~~ one-fifth of the residue of the manor, ~~when we claim~~, since the ruling of the Supreme Court establishing the deed to Sam. A. Chew, ~~that the Plaintiff was entitled to half.~~ ~~But we maintain that our second prayer (p. 42) should have been granted~~

THE SECOND PRAYER OF PLAINTIFF

Raises the question of the effect of possession in supplying the lost line of the deed to Mrs. Chew in 1781. We have already argued that said deed was unlocatable, and no subsequent possession, however marked by accurate lines consistent with the deed, can supply the line called for.

See *ante*, pp. 8, 9, &c.

But the possession in this case conclusively shows that it could never have been taken or held under that deed, as it was not in accordance with the line called for as the northern boundary of the southern moiety.

Godwin, having repeatedly testified that the original fence ran from North West Creek to Scaffold Point Creek, when he first remembered, and was moved south near forty years ago, and the new fence placed between two old fences, the Defendants then proved by H. C. Legg that Scaffold Point Creek is south of the present fence, and if the original fence ran from Scaffold Point Creek to North West Creek, it must have been south of present fence.

Record, p. 40.

This upset the whole testimony of Godwin, the only witness who spoke at all of the original fence. He was recalled and then said there were two fences—one ran to Greenwell's Creek and the other to Scaffold Point Creek, and the new fence went between them and struck a point between those two creeks.

It will thus be seen that the solitary witness who proves the original fence, at first swore that it ran to Scaffold Point Creek and was moved further south near forty years

ago so as to take land from Tait, and that the new fence ran between two old fences, viz: the original fence on the north leading to Scaffold Creek, and another old fence, which must have been south of the new fence, as it was erected between the two old fences.

But when the Defendants' witness, Legg, took the stand and testified that if the original fence ran to Scaffold Point Creek it must have been south of the new or present fence, which all agree has never been changed since first erected. Then Mr. Godwin was re-examined, and testified that there were originally two lines of fence, one running to Greenwell's Creek (which, as Legg says, is north of Scaffold Creek) and one to Scaffold Creek, when he had just before testified that "on the eastern side the first division fence struck Scaffold Point Creek, not near Long Point—can't tell how far. The first creek below Long Creek was Greenwell's Creek, then came Scaffold Point Creek. The line didn't come to Greenwell's Creek, but ran from Scaffold Creek direct to Chew's or North West Creek." Pages 39 & 40.

Nothing could be more uncertain than the existence and locality of any other division fence but the one now erected between Chew and Tait nearly forty fears ago, still standing. This fence is not and cannot be on the line called for in the deed to Mrs. Chase in 1781, because W. Tanner, looking at the plat in evidence says, "an easterly line would go considerably north of the line on this plot;" and again he says, "the division fence terminated then a little further south than this on the plot—the fence has been there since I knew the place, the line on the plot, judging from the proximity, should be put further south; it has been unchanged since witness first knew it." Page 38.

There is therefore no evidence whatever to show that any fence ever stood where it was required to be by the deed of 1781, viz: on an easterly line from Northwest Creek so run as to give exactly to Mrs. Chew the Southern moiety.

The line on the plot shows nothing of this lost and unlocated line, but, as the endorsement on the plot testifies, it

shows a line running south-east from Northwest Creek to Eastern Bay, which strikes no creek on the east. Therefore if the original fence testified to by Godwin ran to Scaffold Creek or Greenwell's Creek, it was not on the line of the plot which shows Middle Creek and Turtle Creek, names by which no doubt these creeks were known in 1802, the date of the plot. Now we assume that Turtle Creek is known as Scaffold Creek, which Legg says is south of the division fence, and Middle Creek, lying north, is now known as Greenwell's Creek.

We submit, that the evidence furnished by this plot, taken in connection with the parol proof of fences, shows that the original fence spoken of by Godwin went either to Middle or Turtle Creek, as marked on this map, and if so, it was not on the line called for in this plot or in the deed of 1787, and could not equalise the quantity north and south.

Nor is the present division fence on the line of this plot or that called for in the deed of 1787.

The agreement of Counsel filed in the old Record, at page 10, and copied in the Appendix to this Brief, shows:

1st. That this case is to be tried the same as if all title papers and possessions had been correctly located and counter-located.

2. That the plot is a correct location of Kent Fort Manor, and that the location and running of its northern line, described as running east, is dispensed with.

3. That the map correctly locates the Patent, and the location thereon of what is called Susannah Tait's moiety, is admitted to be a correct location of the share assigned to her in the division of Arthur Bryan's estate, but the title of said Bryan or his heirs is not admitted.

It would require an infinite calculation to ascertain whether the line of partition in that plot does equally divide the Manor in quantity, but that is immaterial, as no fence ever ran on that line, and there is no presumption from possession touching the line of the deed of 1781.

Besides, if we are right in supposing that the deed of 1781 was never carried out by the running of that line, our second prayer should be granted.

Then the case stands upon the life estate of Mrs. Chew, who survived, as proved, until 1807.

And if her deed to Foreman is also rejected, we have only the deeds of Foreman to Key and Key to Arthur Bryan.

Foreman's deed is clearly void for uncertainty on its face, and is not locatable, unless it can be shown what was purchased by Mrs. Chew from her son.

Key's deed is equally uncertain, but acknowledges the seisin of Mrs. Chew, and is consistent with the estate which she had by the will of her husband for life.

This deed shows how Arthur Bryan claimed the land and gave him notice that Mrs. Chew had but a seisin, and he should have seen whether it was for life, as by the will of her husband, or in fee.

These two deeds were not objected to, although defective on their face, and together they acknowledge the seisin of Mrs. Chew.

But ruling out on the first and second Exceptions both the deeds therein excepted to, it results that no paper title passed to Arthur Bryan for the fee of this land.

If the deed to Mrs. Chew in 1787 be rejected, and that of Mrs. Chew to Foreman be admitted in evidence, it results that Foreman and his assignees only secured the life estate of Mrs. Chew, in the undivided half of the southern portion, (see 3 Prest. Abstracts, 36,) which estate lasted until 1807.

If the deed of 1787 to her be admitted and her deed to Foreman rejected, then she died seised in fee of the whole Manor, and the Plaintiff is entitled to one-half from Lowman Chew, who inherited the whole title from his father.

This continues the paper title in the Chews for the whole tract, and the Defendants, other than Bright and Murphy, must stand on possession alone.

The second branch of our second prayer is based on the well settled principle in Maryland ejectment law, that so

long as a party introduces a defective deed for the land in dispute he cannot ask the Court to indulge in presumptions.

See cases above, at bottom of page 8.

THE PLAINTIFF'S THIRD PRAYER

Is abandoned, because it was predicated on the examination in chief of the witness, Bright, p. 37; which, by his cross-examination, near top of p. 38, was a mistake touching the other fences connecting.

THE PLAINTIFF'S FOURTH PRAYER

Is based on the insufficiency of the fence relied on as an enclosure to prevent stock from going around it on the eastern side, or to prevent persons from passing through the gate.

Mr. Bright, on page 37, says the water fence on Eastern Bay was insufficient to prevent cattle from trespassing around it, owing to the flat character of the river bottom there—that he has frequently seen the flats bare and sandy beyond the water fence on Eastern Bay, which he has seen cattle go around.

It was competent for the jury to find from the known effect of tides on ice that so frail a structure as a water fence had often been carried away by ice in the course of nature.

The fact that there was a gate through which everybody passed is also an objection to the enclosure.

A straight fence not fully protected from trespasses at one end so as to prevent encroachment, is not such an enclosure as will start or maintain limitations.

See Cresap *vs.* Hutson, 9 Gill, 276.
Hove *vs.* Swan, 5 Md. 237.

Up to the deed of 1821 to Samuel C. Chew, it was a case of mixed possession because of the constructive possession of the north part by the three heirs, and it is the same as if they were actually in possession to that date, in which case the

occupier must show his actual and exclusive adversary possession.

All this is fully supported in

Armstrong *vs.* Risteau, 5 Md. R. 280.
Casey *vs.* Inloes, 1 Gill, 496.

In Casey *vs.* Inloes, 1 Gill, it is said a single line of fence is not an enclosure, but only an occupation of the ground under the fence.

5 Md. page 278.

In 24 Maine, 29, the same principle was held.

Even a fence enclosing a tract of land, if a gate was in it, is not an exclusion of the owner, if the jury find he used it.

1 Gill, 500.
5 Md. R. 278.

And so the owner could enter by water without violating any enclosure; and his stock went in, as proved.

The contrary case in 5 Cowen, 218, speaks of the high bank as part of an enclosure sufficient to keep out cattle. Here the owner did in fact pasture his cattle around this fence.

Fences on three sides, though excluding the owner, are not sufficient.

5 Md. R. 278.

THE FIFTH PRAYER OF PLAINTIFF

Is only faulty in assuming that we could only recover a fifth of the grave-yard excepted in the deeds under which the Defendants claim when we are entitled to half, but that is no reason why it should be refused by the Court. The very deed to Mrs. Chew of 1787, reserves the grave-yard and specifies its quantity, and the defence being for the whole Manor, we are entitled at least to that under that deed.

1 Md. Code p. 333.

OUR SIXTH PRAYER is a self-evident proposition which cannot be denied by any one who has considered the evidence on which it is based.

OUR SEVENTH PRAYER should clearly have been granted, as it contains a similar undesirable proposition.

THE DEFENDANTS FIRST AND SECOND PRAYERS WERE ADMITTED.

THEIR THIRD PRAYER,

Erroneously gives the Defendants the benefit of the unlocatable deed to Mrs. Chew of 1787, provided the Jury find that more than twenty years before suit a division fence was established and was recognized as the northern boundary of the land intended to be conveyed by that deed to Mrs. Chew and has continually been held on both sides as such division line; then the verdict must be for Defendants, Cray, Palmer & Goodhard.

We object that there is no evidence that this fence was put up as and for the northern boundary of the deed to Mrs. Chew—in point of fact, being south of the cross-line on the plot, it could not be on a line eqally dividing the manor—nor does the only witness, Godwin, who testifies to any knowledge of the erection of that fence, state that it was put there as the northern boundary of the deed to Mrs. Chew. No survey was had when the fence was changed, and it manifestly was so changed, taking land from Tait at the will of Samuel A. Chew. 11 Md. 297.

This prayer attempts, as was vainly attempted in Hammond *vs.* Norris upon much stronger and more ancient holdings, to evade the stringent rule of law which rejects a deed not locatable on its face, unless by the production of the document or line referred to. While this defective deed was in evidence, no presumption from possession could supply the beginning and course of John Thomas' line. If never run, the deed fails; and if run, that line must be proved, and nothing else will do.

But the Defendants, with the defective deed in evidence as the basis of their title, regardless of the rule that requires it to be first withdrawn, sought to indulge in the same presumptions, as if the deed was not in evidence.

THEIR FOURTH PRAYER,

Granted by the Court, relies on adverse possession by enclosure for over twenty years.

This proposition we should not resist as a fair issue to be submitted to the jury, but for three reasons—

1st. While the unlocatable and void deed under which they derive title was in evidence, the inexorable rule of law would not allow them to claim any other title than the defective one introduced and relied on.

6 H. & J., 351.
20 Md., 395.

2d. There is not a scintilla of evidence to show an adverse possession on their part. We have the facts in evidence that there was an original fence or fences across the island, the location of which is most uncertain, upon the whole testimony of Godwin, the only witness who ever saw them—that nearly forty years ago S. A. Chew and Tait changed the fence further south so as to take land from Tait, and while Tait said nothing, Chew said the new fence was made their division line, and from that date both cultivated up to that fence. Now does this show an adverse possession by Tait and those under him? At best it is a silent possession and user without any claim whatever.

The legal presumption is that a silent possession, with or without enclosures, is in subordination to the true title. There must be proof of the adverse claim accompanying the possession.

This prayer, however, well supported by evidence, would have been bad on its face if it had not spoken of possession with claim of title.

27 Md. R., 546.

The question is whether there must not be some proof of a claim of title or that the possession was adversary.

In 8 Cowen, 603, it is said that "the mere possession of land without any claim of right gives no title, however long it may continue, and the true owner may lawfully enter on the occupier at any distance of time."

This principle was carried so far that it was held the true owner may recover on a deed fifty-five years old, because the possessor showed no title or claim of right in those under whom he claimed for that long period of time.

3 Wendell, 152.

True, in that case, this long possession had been held by the grantor and his assignees. But the Court put it on the distinct ground that no claim had accompanied the possession.

Mr. Slosson's argument of this case, in p. 141, shows how strongly but vainly he stated the presumptions from naked possession for such a length of time. A silent possession without affirmative evidence of a claim of right, will not be sufficient to constitute *per se* adverse possession.

Angell on Limitations, secs. 384, 385, 390.

The possessor without claim is presumed to be a tenant of the real owner.

7 Wheat. 242.

In our case this principle is fortified by the facts that some forty years ago our ancestor, S. A. Chew, moved his fence south and took land from Tait—

That William Bryan declared that he was tenant of the Chews before the war, (meaning of 1812.)

Godwin, p. 39.

NOTE.—That as Mrs. Susannah Tait was the sister of Arthur Bryan, under whom they claim (Godwin, p. 38) Wm. Bryan must also have been one of his heirs, as the endorsements on the map show he was the petititioner for the partition of his brother's estate. Therefore his declarations

seem to have been admissible, as they may have related to his tenancy before the partition of 1802, or at sometime afterwards; but being admitted by the Court as against William Bryan; and so far as his own holding they were fully in evidence for the consideration of the jury. Note, also, that the statement of Mr. Godwin, in page 38, as to who told him he was tenant of the Chews is made clear by the subsequent explanation that he never saw James Bryan, and therefore he meant to say it was William Bryan who so stated.

The principle is further fortified by the additional fact that in 1840, while Chew was in possession of the manor he claimed the whole of it for the heirs of his father.

These facts, with an utter absence of all adverse claim by those who held possession seem to justify the inference that the tenants occupying were only assignees of Mrs. Chew's life estate in the lower moiety, holding over after her death in 1807.

This brings us to the theory on which we explain this long possession, which is this—

The deed to Mrs. Chew speaks of the boundary line to be run; it shows a contract, unexecuted on its face.

The line seems never to have been run, and therefore her title was incomplete.

In all the subsequent conveyances from her to Foreman, and from Foreman to Key, and from Key to Arthur Bryan, we find no allusion to the line which Thomas was to run. Those deeds merely profess to pass "the lower moiety" by no definite bounds. If they have any legal operation they convey but an undivided moiety on their face.

3 Prest. Abstracts, 36 side page.

Now, it may be that the line was never run, from some good reason at the time, and her incomplete deed was abandoned without any reconveyances after 1798, when Foreman had deeded to Key this inchoate title derived from Mrs. Chew.

Then we have the fact that Sam. L. Chew, Jr., died as far back as 1796, leaving children who must all have been infants or *feme coverts* at that date, judging from the marriages given in evidence and the periods of their recent deaths of some of them. Two of his daughters were *feme coverts* at very early periods.

Sam. A. Chew, in all probability, discovered this derelict property, part of which was held over by the assignees or tenants of Mrs. Chew's life estate. In 1822 he buys from his two sisters and enters upon the sedge fields and improved them. These neglected sedge fields show ignorance on the part of the heirs of S. L. Chew, Jr., of their rights.

We insist that at the time of this entry into the northern portion he made claim to and obtained a recognition of his title from the only occupier of the lower portion. In fact he seems to have moved his fence south, beyond where Mrs. Chew's line could have run, and took a portion of what is called the southern moiety without any objection from Tait. He certainly obliterated the original line of fence across the island.

These facts, and the remarkable non-claim of title by the occupiers of the southern half, seem significant of a known defect in their title; and an acquiescence in the title of S. A. Chew when he, in 1822, came to assert his right to the whole.

There are no facts in this case inconsistent with this theory; for, in 1822, when S. A. Chew discovered this domain, part hidden in sedge, and part held without title, and entered purchasing (his sister's) rights in the whole manor, as will be seen by their deed in page 12, he was then in a position to say to Robert Tait, then the sole occupier of the southern portion, that twenty years had not elapsed from the death of his mother, the life-tenant, and no possession by her or her assignees could start the Statute of Limitations against the remaindermen until 1827; and if Tait had relied on the deeds now offered in evidence Chew could have said, as we say, that each and all of them were nullities on their face. It is undeniable that up to 1827 Samuel A. Chew could not

have been resisted on length of possession but only by the legal force of the deed to Mrs. Chew and her deed to Foreman.

But it will be said if Samuel A. Chew became by acquiescence the landlord of Tait, whose fence he moved, why do we not prove that fact? But see the explanation—Tait is long since dead, and Samuel A. Chew died in 1842, twenty eight years ago, leaving a lunatic son, who survived until 1862. Is there not every reason to suppose that all the papers and contracts of Samuel A. Chew have perished in twenty-eight years, while his lunatic son held possession.

3d.—But be that as it may, if we rule out the deed to Mrs. Chew and the occupiers continued to hold after her death, it is the case of holding over which cannot be adverse without a scienter of its being adverse, and the 4th prayer of the Defendant ignores the benefit of such a holding over to us.

Where a party is holding over after death of a person under whom they held rightfully, no subsequent possession, even accompanied with building, &c., will amount to adverse possession, at least without scienter of an adverse claim brought home to the true owner.

20 Johns. 305.

The holding over of tenant for life after the determination of his estate, is no dissesin of the rightful owner though accompanied with claim, meaning of course without scienter.

2 Wend. 166.

As Mrs. Chew, who took a life estate in the Manor, possessed the same in person or by parties claiming under her, no limitations could commence to run until 1807, when she died; nor would the holding over after her life estate expired, create any presumption of adverse possession, without proof of a disclaimer of the title of the remainder and a scienter thereof, a proposition fully established by numerous authorities.

4 How. 289.
2 G. & J. 173.

6 G. & J. 80.
10 G. & J. 443.
5 H. & J. 226.
7 G. & J. 20.
8 G. & J. 39.
10 East. 591.
1 Root, 546.

The recording of the deeds to Foreman, Key and Bryan is not any notice of adverse claim to the true owners.

14 Pick. 224.
Angell on Limitations, p. 441.

But surely it cannot be claimed that the heirs of Samuel L. Chew, Jr., whose title accrued by the death of his father in July 1786, were bound with notice of subsequent conveyances, dating from a life tenant, whose estate arose under the will of that father.

4th.—20 How. 32 decides that the Defendants must connect themselves in privity with the former occupiers whose possession they rely on, and cites approvingly a decision to same effect in 9 Texas, 377.

And to the same effect is the case in 5 Md. 275.

1 Johns. 15-8.

Applying this principle to the facts, there is no evidence in this case to connect the Cray's in privity with the Tait's, or to show how they claim and when they entered—no deed to them and no proof of heirship on their part—they must have entered some twenty-five years ago at Robert A. Tait's death.

By Bright's testimony, (page 37,) it appears there was but one farm until twenty years before this trial, say until 1848, when Richard Cray got possession—about this time Robert A. Tait died and Dr. Cray had lived there until he died, that is with Robert A. Tait until he, Dr. Cray, died some forty years ago, but finally Mr. Bright said, in page 37, he only knew that Dr. Cray had ever lived there by

hearsay—then Mr. Godwin is the only other witness who speaks of Dr. Cray, but he must be mistaken when he says, in page 39, that "after old Mr. Tait's death, Robert Tait succeeded, then Dr. Cray," whom Bright distinctly says he never saw Dr. Cray, who was reported to have died forty years ago, and Robert A. Tait only died some twenty years before the trial.

See page 37.

At the death of Robert Tait, Hopkins occupied the land, but there is no proof whose tenant he was, for Bright says, page 36, "Hopkins didn't say whose tenant he was," and when, in page 36, he said that "Hopkins was Tait's tenant," he did not mean to state any knowledge, but only supposition.

Tanner says, (p. 38,) he knew the place in Mr. Hopkins' time—then Embert occupied as tenant under Mr. R. Cray, about 1835."

Godwin says, in page 39, "Hopkins occupied as tenant," but don't say whose tenant.

There is therefore no proof that when Richard Cray entered as stated by Bright, some twenty years before the trial, say in 1848, and divided the one tract into four farms, he was in privity with the Taits, the former occupiers. At this date he assumed ownership by dividing the land, and disseised Lowman A. Chew, who was then the lunatic heir of S. A. Chew, who died in 1842. No adverse possession or disclaimer by Richard Cray after the death of S. A. Chew could start limitations.

There is a mystery about the manner in which the Crays got possession,—old Dr. Cray lived with Robert A. Tait, who, according to Bright, survived him, and who does not seem to have left any heirs or to have disposed of the land. Then, about 1848, Richard Cray, his son, is found on the land without privity with the previous possession of the Taits. He manifestly entered and assumed dominion by making four farms out of one, at a time when the owner was a lunatic, and so continued until 1862.

The Fourth Prayer of Defendant is therefore vicious in addition to the other objections, because it excludes the necessity of a scienter of the adverse claim if the Court shall reject the deed of 1787 to Mrs. Chew and leave her assignees but tenants during her life, and because it assumes the privity of the Crays with the previous possession of the Taits.

DEFENDANT'S FIFTH PRAYER,

(Record, 45.)

This Prayer was erroneously granted, because it defeats the Plaintiff as matter of law if the jury shall find the execution and delivery of the deed of mortgage from the Plaintiff to Otho Scott, found in

Record, page 41.

The prayer seeks to maintain that a legal title passed as matter of law by the execution and delivery of the deed of mortgage to all the land of which Lowman Chew died seised, and yet it does not require the jury to find the recording of the mortgage or the identity of the land conveyed.

It mortgages the Plaintiffs' interest "in a tract of land (not named) containing 600 acres, more or less, being the same land, and all the lands of which Lowman Chew died seised."

This mortgage is dated 10 February, 1863, some eight months before this suit was brought, and is payable in three years on its face. It describes no land by name or boundaries—it conveys "a tract of land containing 600 acres, more or less, being the land and all the land of which Lowman Chew was seised."

The objection assumes that it passes the legal title to all the Plaintiff's interest in Kent Fort Manor by force of the words "the lands and all the land whereof Lowman Chew was seised."

Now the Defendants are defending this case on the ground that Lowman Chew, even if he had the paper title, was

ousted or disseised of these lands, and yet in the same breath they ask the Court to instruct the jury that they are entitled to the verdict, because the deed of mortgage operates on all the lands of which Lowman Chew was seised, and he was seised of these lands.

Now what is the definition of seisin but the actual possession of lands.

1 Institutes, 153*a*.
Watkins on Descents, 40-1.
Per Lord Mansfield, 1 Burr. 107.

If, as we have heretofore argued, the disseisin began at the death of Samuel A. Chew, in 1842, or since, it is clear that Lowman A. Chew was never seised according to this definition of the disputed land.

We confidently maintain that it was for the jury to find on the whole evidence what tract of land containing 600 acres, more or less, of which Lowman Chew was seised, was intended. Bright testifies, page 36, that at his "first recollection, S. A. Chew was living on the farm, where he died, to which his son, Lowman Chew, succeeded."

The Defendants, disregarding the evidence that Lowman Chew died possessed and seised of this tract containing 400 acres, part of Kent Fort Manor, to which his title was undisputed, now claim that the Court and not the jury are to decide, that the mortgage operates *proprio vigore* on all Miss Deery's title to a tract called Kent Fort Manor, containing over 2,000 acres, 400 acres of which only was seised and possessed by Lowman Chew at his death.

Independently of other evidence, we find that the executors of the mortgagee filed a petition (page 28) setting forth "that John M. Robinson, as trustee, has sold the real estate of Lowman Chew and the proceeds of sale are now in Court for distribution—that said Plaintiff, Eliza C. Deery, had conveyed all her interest in said lands to said Scott," thus limiting by their solemn petition the mortgage to that very land which had been sold by Robinson; and in page 26 it

appears Robinson had sold a tract of only 400 acres by the acre, (being in fact the land actually possessed by Lowman Chew,) and in pages 33, 34 and 35, nearly a year before this trial, we have the full payment of this mortgage claim out of the proceeds.

The Defendants were therefore allowed by their Fifth Prayer to bar the plaintiff's title to all the Manor, by her mortgage to Otho Scott for part of it, viz: "a tract of land containing 600 acres, being the lands, and all the lands of which Lowman Chew died seized," although it was shown that at its date there were four tracts south of the cross-line, and one north of it (p. 37), and the whole evidence showed it was only designed to mortgage the particular tract containing 400 acres, of which Lowman Chew died seised and possessed; and this was sanctioned by the Court, although there was an utter want of privity between the Defendants and the said Scott, the mortgagee.

The Defendant cannot set up an outstanding mortgage to a stranger.

5 Halstead, 156.
7 Johnson, 275.

But it is an unquestioned rule of law that a Defendant can never defeat a Plaintiff by an outstanding title unless it is a present, subsisting and operative title, on which a recovery can be had.

11 Harris, 222.
9 Watts, 515.
3 Johns. R., 375.
6 ———, 275.
6 Peters, 302.

A satisfied mortgage can never be set up to defeat a Plaintiff who has paid it off; so that it is no longer subsisting at the trial.

5 Peters, 483.

This case is directly in point, and should rule the present case, because it came up from Washington county, in the District of Columbia, where the Maryland law prevails.

See, also, Buller's N. P., 110.

The case in 2 H. & J., 173, will be relied on to show that the outstanding mortgage must be satisfied before suit brought or it will defeat it; but by looking at the Second Exception, in page 172, it will be seen that there was in that case no proof that the mortgage had been satisfied at all; but it was outstanding, and the general language of the judge, in page 173, is no authority on the question of a mortgage satisfied before trial, as the point was not before the Court.

In the same book (2 H. & J., 125) it is held that the outstanding title which will defeat a Plaintiff must be a clear, subsisting title, on which the stranger could recover against either party.

In 2 Harris & McHenry, p. 17, it was held that a satisfied mortgage would not bar the mortgagors ejectment though the legal title had not been reconveyed, and in 3 H. & McH. 399, the assignee of a satisfied mortgage not reconveyed was nonsuited.

Now, could anything be more absurd than to allow a satisfied mortgage, whether satisfied before suit or *pendente lite*, to be set up merely to require the Plaintiff to bring a second ejectment, and perhaps be non-suited in the second case by the Statute of Limitations?

The latest case in Maryland is that of Georges Creek Company *vs.* Detmold, 1 Md. Rep., 233, where the Court, while conceding that the legal title to the fee had passed by the mortgage of the Plaintiff prior to the suit, yet held it could not defeat the mortgagor's ejectment, because, being a possessory action, the mortgage in that case containing a covenant that the mortgagor should retain possession until default entitled him to the usufruct of the property even against the mortgagee. It is plainly to be inferred from the language in p. 237 that the Court would if necessary have decided in favor

of the mortgagor's right to recover in ejectment against a third party notwithstanding there was no covenant for possession until default.

It must follow that as the mortgagor, until entry by the mortgagee is a tenant at will, entitled to hold possession and take the rents to his own use, he has necessarily a right to recover the possession of his lands from all the world but the mortgagee.

What principle of justice is promoted by allowing a trespasser to bar the mortgagors' right to possession because of a satisfied mortgage to a stranger who does not and cannot now claim the possession."

In 5 H. & J., 312, it is shown that the mortgagor is considered the substantial owner, and his interest is liable to attachment. It is liable to be sold on a *fi. fa.*

1 Maryland Code, 586.

That the mortgagor is a tenant at will, although not entitled to notice.

See Jamieson *vs* Bruce, 6 G. & J., 74, 75, 76.

In page 76 of this last case it is said "the mortgagee is entitled to possession when he chooses to exercise the right." But until he does so choose, is not the mortgagor entitled to the possession?

His title to the possession and rents is therefore valid against all but the mortgagee, and only yields to his superior rights.

5 Halstead, 156.
7 Johns., 278.
6 Hill, 472.
9 Alabama, 633.
26 Ohio, 138.

We submit, therefore, that under the light of all the cases in Maryland, and especially the recent case in 1 Maryland R., 233, the Courts of Maryland must hereafter hold, that it is immaterial where the legal title may be, and the mortgagor can recover lands against an intruder, who cannot shield himself by an outstanding much less by a satisfied mortgage unless he claims in privity with the mortgagee.

ROBERT J. BRENT,
T. T. Crittenden,
For Plaintiff in Error.

APPENDIX.

I.

The Courses and Boundaries of Kent Fort Manor, as extracted from the Patent in original Record, p. 9, viz:

All that neck of land lyeing nearest together about Kent Fort, in the said Isle of Kent, bounding upon the west, east and south with Chesapeake Bay, upon the north with a line drawn through the woods straight east from the north-eastermost branch of the Creek called Northwest Creek unto a swamp in the said bay, on the east side of the said neck, containing by estimation and now set forth for one thousand acres, be it more or less, and all woods, quarries, mines, (royal mines excepted,) waters, royal fishes, fishings, fishing places, advowsons, and patronages of churches, wrecks not claimed by the owner within a year and a day, waifes, strays, felon's goods, free warren liberty of hunting, hawking, and fowling for any sort of game whatever, and all other profits, advantages, comodities, emoluments, and hereditaments in or upon the same, or any part thereof, saving to us and our heirs our royal jurisdiction and seigniory as absolute lords and proprietors of the said province of Maryland, and saving unto Giles Basha and Thomas Allen, their heirs and assignes, their freeholds granted or to be granted—to them which, nevertheless, we will that they, and either of them, hold of the said Giles Brent and his heirs, paying the rents and performing the services for the same unto our said brother in such manner as the same ought to have been paid unto us or our heirs. To have and to hold ye same unto him, ye s'd Giles Brent, and his heirs, forever.

II.

Extracts from the Will of Samuel L. Chew, the elder, as found in original Record, p. 15.

COPY OF SAMUEL L. CHEW'S LAST WILL.

In the name of God, amen. I, Samuel Chew, of Herring Bay, in Ann Arundel County and State of Maryland, being in perfect health and of sound and disposing mind, memory, and understanding, considering the certainty of death and and the uncertainty of the time thereof, and being desirous to settle my worldly affairs, do hereby make and publish this to be my last will and testament in manner and form following, that is to say: Imprimis, I give and bequeath unto my dear wife, Elizabeth Chew, all my real estate upon Kent Island, in Queen Ann's County, known by the name of Kent Fort Manor, and lately purchased of William Brent, esq'r, of Virginia, for and during her natural life, and after her death to my son, Samuel Lloyd Chew, and his heirs forever, in fee simple.

III.

Deed from Samuel L. Chew to Elizabeth Chew, dated 22d October, 1787.

This Indenture made this twenty-second day of October in the year of our Lord one thousand seven hundred and eighty-seven. Between Samuel Lloyd Chew of Anne Arundel County, Gentleman, of the one part, and Elizabeth Chew of Kent Island in Queen Anne's County of the other part, Witnesseth, that the said Samuel Lloyd Chew for and in consideration of the sum of three thousand five hundred pounds current money to him in hand paid and secured to be paid by the said Elizabeth Chew, the receipt whereof is hereby acknowledged, Hath granted, bargained and sold,

and by these presents doth grant, bargain and sell unto her the said Elizabeth Chew her heirs and assigns forever, all that moiety or half part of a tract of land called Kent Fort Manor lying and being on Kent Island in Queen Anne's County being all that part of said tract of Land which lies to the South westward of a line beginning on Northwest Creek, and running an easterly course agreeable to the plot of said land made by William Brown of Anne Arundel County, in such manner as to comprehend one half of the number of acres of the whole tract, the said line to be run and ascertained under the direction of John Thomas Esquire of Anne Arundel County, the burying ground where Samuel Chew Esquire, deceased, Father of the Grantor is interred, containing half an acre, excepted; together with all and singular the Improvement, hereditaments and appurtenances whatsoever, except as before excepted, to the said part belonging or in anywise appertaining; and the remainder and remainders, reversion and reversions, rents, Issues and profits thereof; and all the Estate, right, title, and Interest both at Law and in equity of him the said Samuel Chew, of in and to the part herein before described, except the burying ground aforesaid. To have and to hold the aforesaid part of the tract of Land aforesaid called Kent Fort Manor, except as before excepted, unto her the said Elizabeth Chew, her heirs and assigns forever, and the said Samuel Lloyd Chew for himself and his heirs, the aforesaid part of the said tract of land called Kent Fort Manor except as before excepted and appurtenances, unto her the said Elizabeth Chew her heirs and assigns from and against him the said Samuel Lloyd Chew and his heirs and from and against all other persons claiming under him, or them, shall and will warrant and forever defend by these presents.

In witness whereof the said Samuel Lloyd Chew hath hereunto set his hand and affixed his seal the day and year first above written.

SAMUEL L. CHEW, L. S.

Signed Seal and delivered in presence of
A. C. HANSSON.

At the foot of the aforeging Deed was thus written to wit,

Received on the day and year first within written of and from the within named Elizabeth Chew the consideration within mentioned being the sum of three thousand five hundred pounds current money.

SAMUEL L. CHEW.

Test. A. C. HANSSON.

Maryland, on the twenty second day of October 1787 came before the subscriber one of the Judges of the General Court, Samuel Lloyd Chew, party to the foregoing instrument of writing and acknowledged the same to be his act and deed and the parcel of Land therein described to be conveyed, to be the right and Estate of Elizabeth Chew the Grantee therein named his heirs and assigns forever, According to the true intent and meaning thereof, and the Acts of Assembly in such case made and provided.

A. C. HANSSON.

Recorded the 31st March 1788.

MARYLAND, Sct.

I, George Earle, Clerk of the Court of Appeals of the State of Maryland, do hereby certify that the aforegoing is a full and true copy taken from Liber "J. E. No. A," folio 234, &c., one of the Land Records of the late General Court for the State of Maryland deposited in and belonging to the office of the Court of Appeals of said State.

In testimony whereof I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals of Md. this 30th day of March, A. D. 1864.

SEAL.

GEORGE EARLE,

Clerk of the Court of Appeals of Maryland.

IV.

Agreement of Counsel as found in original Record, p. 10.

AGREEMENT OF COUNSEL.

Circuit Court of the U. S. for the Maryland District.

DEERY'S LESSEE
vs.
BRIGHT AND OTHERS.

It is agreed that the defence on warrant shall be withdrawn, so that the necessity for locations on either side may be dispensed with; and that the Plaintiff and Defendants, or either or any of them, respectively, may offer their title papers in evidence, and their proofs of possession, under said title papers or otherwise, in the same manner and to the same effect as if said title papers and possession had been correctly located and counter-located.

It is further agreed that all the lands for the recovery of which this action is brought lie on Kent Island, south of the line described in the patent Fort Manor as the line drawn east from N. West Creek, the location and running of which line are dispensed with.

Also that a duly certified copy of the map of Kent Fort Manor, marked No. 10, and filed in the Court of Chancery of Maryland on the 8th of November, 1802, in the matter of the petition of William Bryan and others for the partition of the real estate of Arthur Bryan, deceased, may be used by either party at the trial for the purpose of illustration, and that the same may be used in evidence for any purpose for which it would be competent, if the whole record were produced without the necessity of producing the whole record. The said map is admitted to be a correct location of Kent Fort Manor, as it purports, and the location thereon of what is called "Susanna Tate's moiety" is admitted to be a correct location of the share of the said Manor assigned in the said proceeding to Susanna Tate, sister of the said

Arthur Bryan, in the partition of the said Bryan's real estate, but the title of said Bryan or his heirs to said real estate is not admitted.

If the plaintiff shall recover a verdict for any part of the land mentioned in the declaration, it is agreed that the jury may by their verdict locate and describe said part to the same effect as if said part were correctly located on plats in the cause, and that the map hereinbefore mentioned may be referred to by the jury in their verdict for that purpose if they see fit.

It is further agreed that the Plaintiff shall leave to offer in evidence the special verdict in the case of Brent's Lessee *vs.* Tasker, as reported in 1 Harris and McHenry's Reports, 89, to prove the pedigree therein set forth, to the same effect as if a complete copy of the record in the said cause were produced.

ROBERT J. BRENT, *for Pl't'ff.*
S. T. WALLIS, *for Def'ts.*

Plat or Map referred to in Agreement.

In the Circuit Court, United States, 4th Circuit, Maryland District, November Term, 1864.

DEERY'S LESSEE
vs.
CRAY AND OTHERS.

It is agreed that the plat called for in Plaintiff's 1st Exception shall be used in the Supreme Court, and not be inserted in the Record.

R. J. BRENT, *for Pl't'ff.*
S. T. WALLIS,
for Def'ts, whom he represents.

And also read in evidence the Record of the case of Brent's Lessee *vs.* Tasker, as reported in 1 Harris & McHenry's Reports, p. 89, made a part hereof; and also read in evidence the extract from the debt books for Queen Anne's County, made a part hereof.

Extract from Debt Book.

William Brent, Dr.

Kent Fort Manor, 20 buss. corn	£1,000
Wright's Fortune acc's purchase	120 2 5

LAND OFFICE OF MARYLAND.

I hereby certify that the aforeging is truly copied from the debt book of Queen Ann's County for the year 1767, folio 6, now one of the land record books of this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the land office of Maryland, this 15th day of November, 1864.

WM. L. W. SEABROOK.

[SEAL.] *Com'r of the Land Office.*

Supreme Court of the U. S.

December Term, 1869.

No. 210.

MARTHA CRAY AND OTHERS,

Defendants in Error,

ats.

ELIZA C. DEERY'S LESSEE.

BRIEF OF DEFENDANTS IN ERROR.

S. T. WALLIS,
For Defendants in Error.

Sherwood & Co. Printers and Stationers, 138 Baltimore street, Baltimore.

Supreme Court of the United States.

December Term, 1869.

No. 210.

MARTHA CRAY AND OTHERS,

Defendants in Error,

ats.

ELIZA C. DEERY'S LESSEE.

BRIEF OF DEFENDANTS IN ERROR.

This cause comes up, a second time, from the Circuit Court for the District of Maryland, on a writ of error taken by the plaintiff. It will be found reported in 5 Wallace, 795. It is an ejectment for the recovery of an undivided third part of a tract on Kent Island, Chesapeake Bay, called Kent Fort Manor. On the former hearing there were substantially but two questions: 1st, as to whether a certain ancient deed and its recitals had been properly excluded below, in view of facts and conveyances adduced to show that possession had passed with and been continuously held under it; and 2d, whether a deed from the mother of the plaintiff, (which the Court below had admitted,) conveying all her interest in the Manor, was sufficiently executed and acknowledged under the Statutes of Maryland, in respect to conveyances by *femes covert*. This Court (Mr. Justice

Miller delivering its opinion) reversed the Circuit Court on the first point, but sustained it on the second. The deed of her mother, thus ratified, put the plaintiff out of Court as the record stood, but this tribunal remanded the cause notwithstanding, on the ground that the plaintiff might possibly have been deterred, by the rejection of the deed which was erroneously excluded, from setting out her full case in reply to the deed which was properly admitted; and it was but just that she should have an opportunity of putting herself right if such were the case. By the improper rejection of the ancient deed, the Court said, she had been prevented from making out even a *prima facie* case, and therefore had had no interest in offering to show any thing, (such, for instance, as forgery,) which might avoid the force of her mother's conveyance.

See 5 Wallace, 807, 808.

When the remanded cause came up for hearing at the Circuit, the plaintiff, who had really no defence, of any sort, to her mother's deed, except the formal objection which this Court had repudiated, acknowledged, without more ado, that she had none, and made an entire change of her pretensions. Instead of claiming under her mother and against the deed which this Court had remanded the cause for her to discredit, she asserted title exclusively under that same deed, and as an heir-at-law of her cousin, the son of her uncle Samuel A. Chew, to whom the deed was made. Her position, therefore, at the present hearing is precisely the opposite of what it was when the cause was here before. And this too, not only in the particular already stated, but in the fact that the leading exception now to be considered is the result of an unsuccessful effort to repudiate in the Court below, as evidence for the defendants, one of the very deeds introduced by the plaintiff herself on the former trial, to give efficacy to the ancient deed then in controversy. This identical deed, from Philip Barton Key to Arthur Bryan, was much relied on by this Court, (5 Wallace, p. 804,) and had been vehe-

mently urged in argument by the plaintiff, as a ground of the reversal which sent the case back. The plaintiff is consequently here to day, relying on the deed which this Court determined to be a bar to her pretensions, on the case then before it, and asking the Court to reject the deed by which, as her own proof, she then established error upon her other exception. She claims only one-fifth, now, instead of one-third as before.

It is necessary, further, to premise that the defendants severed in their pleadings, and took separate defences according to their separate possessions. It was agreed, among other things, between counsel, that the defence on warrant, according to the Maryland practice, should be withdrawn, so as to dispense with the necessity of location and enable documentary evidence and proof of possession to be given as if located and counterlocated. That agreement, introduced at length into the first record, was renewed at the last trial, (p. 3,) and is here reproduced for convenient reference.

"AGREEMENT OF COUNSEL.

DEERY'S LESSEE *vs.* BRIGHT AND OTHERS.	Circuit Court of the U. S. for the Maryland District.

23. It is agreed that the defence on warrant shall be withdrawn, so that the necessity for locations on either side may be dispensed with; and that the plaintiff and defendants, or either or any of them, respectively, may offer their title papers in evidence, and their proofs of possession, under said title papers or otherwise, in the same manner and to the same effect as if said title papers and possession had been correctly located and counter-located.

It is further agreed that all the lands, for the recovery of which this action is brought, lie on Kent Island, south of the

line described in the patent of Kent Fort Manor as the line drawn east from N. West Creek, the location and running of which line are dispensed with.

Also that a duly certified copy of the map of Kent Fort Manor, marked No. 10, and filed in the Court of Chancery of Maryland, on the 8th of November, 1802, in the matter of the petition of William Bryan and others for the partition of the real estate of Arthur Bryan, deceased, may be used by either party at the trial for the purpose of illustration, and that the same may be used in evidence for any purpose for which it would be competent, if the whole record were produced, without the necessity of producing the whole record. The said map is admitted to be a correct location of Kent Fort Manor, as it purports, and the location thereon of what is called "Susanna Tate's moiety" is admitted to be a correct location of the share of the said Manor assigned in the said proceeding to Susanna Tate, sister of the said Arthur Bryan, in the partition of the said Bryan's real estate, but the title of said Bryan or his heirs to said real estate is not admitted.

24. If the plaintiff shall recover a verdict for any part of the land mentioned in the declaration, it is agreed that the jury may by their verdict locate and describe said part to the same effect as if said part were correctly located on plats in the cause, and that the map hereinbefore mentioned may be referred to by the jury in their verdict for that purpose if they see fit.

It is further agreed that the plaintiff shall have leave to offer in evidence the special verdict in the case of Brent's Lessee *vs.* Tasker, as reported in 1 Harris and McHenry's Reports, 89, to prove the pedigree therein set forth, to the same effect as if a complete copy of the record in the said cause were produced.

ROBERT J. BRENT, *for Pl'ff.*
S. T. WALLIS, *for Def'ts.*"

When the plaintiff, changing front, at the recent trial, adopted and claimed under the deed of her mother to Samuel A. Chew,

(p. 12,) she was forced at once to recognize also the validity of certain undisputed deeds, (pp. 15 to 19,) executed by Samuel A. Chew to Murphy and Bright, and conveying the premises for which the defendants, Bright, Legg and Tanner, had taken defence. The plaintiff's counsel consequently assented to certain instructions of the Court below, (p. 44, defendants' 1st and 2d prayers,) by which the right of the named defendants to a verdict was established. (See p. 45, last paragraph, for this admission.) The plaintiff further abandoned all claim against the defendant Lane, (p. 45, *ub. supr.*) These four defendants represented the whole of the upper half of Kent Fort Manor. Yet although the verdict and judgment in their favor below were by consent and unavoidable, and no error can possibly be assignable in their case, they are still brought here a second time by the writ of error, (p. 46,) at great cost and expense; their titles, claims, defences and possession being wholly several and distinct from those of the other defendants.

At the late trial the title to the whole of Kent Fort Manor was brought down by the plaintiff to Samuel Chew, (sometimes called Samuel L. Chew, the elder,) by proper documentary proof, (p. 3.) The will of the said Samuel, dated November 24th, 1785, and admitted to probate July 29th, 1786, being produced, contained the following provision:

"*Imprimis*—I give and bequeath to my dear wife, Elizabeth Chew, all my real estate on Kent Island, in Queen Anne's County, and lately purchased of William Brent, Esq., of Virginia, for and during her natural life, and after her death to my son, Samuel Lloyd Chew, and his heirs forever in fee simple."

This will was read from the former record and is omitted in the present one under an agreement, (pp. 3 and 4.) The above extract is all that it is material to present.

The plaintiff then proved that Samuel L. Chew, the devisee in remainder, died about 1796 or 1797, his mother, Elizabeth, the devisee for life, surviving him until about 1807, (p. 4.)

The heirs of Samuel L. Chew were his son Samuel A. Chew,

and his daughters, Mrs. Schnebly and Mrs. Deery, the mother of the plaintiff. Samuel A. Chew died in 1842, leaving his only son and heir Lowman Chew, a lunatic, who died in 1862 intestate and without issue. Mrs. Deery, the plaintiff's mother, became a widow about 1799, and afterwards married a Mr. Beatty in 1809. She died in 1839, leaving the plaintiff and a son named Edward, who died prior to July, 1862, leaving children. Beatty died in 1859. Mrs. Schnebly died in 1846, leaving four children, (p. 4.)

There the plaintiff rested, and the defendants, in order to show that the title to the lower half of the Manor had passed out of Samuel L. Chew, Jr., in his lifetime, offered in evidence, among other, a deed of the same from him to his mother, Elizabeth Chew, which is omitted by the clerk in the record, (p. 4,) but which is admitted to be as follows:

"This Indenture, made this twenty-second day of October, in the year of our Lord, one thousand seven hundred and eighty-seven, between Samuel Lloyd Chew of Anne Arundel County, gentleman of the one part, and Elizabeth Chew of Kent Island in Queen Ann's County, of the other part, witnesseth that the said Samuel Lloyd Chew, for and in consideration of the sum of *three thousand five hundred pounds*, current money, to him in hand paid and secured to be paid by the said Elizabeth Chew, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain and sell, unto her, the said Elizabeth Chew, her heirs and assigns forever, *all that moiety or half part of a tract of land called Kent Fort Manor, lying and being on Kent Island, in Queen Anne's County, being all that part of said tract of land which lies to the south-westward of a line beginning on North West Creek, and running an easterly course agreeable to the plat of said land made by William Brown, of Anne Arundel County, in such manner as to comprehend one-half of the number of acres of the whole tract, the said line to be run and ascertained under the direction*

of John Thomas, Esquire, of Anne Arundel County, the burying ground where Samuel Chew, Esq., deceased, father of the grantor, is interred, containing half an acre excepted; together with all and singular, the improvement, hereditaments and appurtenances whatsoever, except as before excepted, to the said part belonging or in anywise appertaining; and the remainder and remainders, reversion and reversions, rents, issues and profits thereof; and all the estate, right, title and interest, both at law and in equity, of him, the said Samuel Chew, of in and to the part hereinbefore described, except the burying ground aforesaid. To have and to hold the aforesaid, part of the tract of land aforesaid, called Kent Fort Manor, except as before excepted, unto her, the said Elizabeth Chew, her heirs and assigns forever, and the said Samuel Lloyd Chew for himself and his heirs, the aforesaid part of the said tract of land called Kent Fort Manor, except as before excepted and appurtenances, unto her, the said Elizabeth Chew, her heirs and assigns from and against him, the said Samuel Lloyd Chew, and his heirs, and from and against all other persons claiming under him or them, shall and will warrant and forever defend by these presents.

In witness whereof the said Samuel Lloyd Chew hath hereunto set his hand and affixed his seal, the day and year first above written.

SAMUEL L. CHEW, L. S.

Signed, sealed, and delivered in presence of A. C. HANSON.

At the foot of the aforegoing deed was thus written, to wit: Received on the day and year first within written, of and from the within named Elizabeth Chew, the consideration within mentioned being the sum of three thousand five hundred pounds, current money.

Test: SAM'L L. CHEW.

A. C. HANSON.

Maryland; On the twenty-second day of October, 1787, came before the subscriber, one of the Judges of the General Court, Samuel Lloyd Chew, party to the foregoing instrument of writing, and acknowledged the same to be his act and deed, and the parcel of land therein described to be conveyed, to be the right and estate of Elizabeth Chew, the grantee therein named, her heirs and assigns forever, according to the true intent and meaning thereof, and the Acts of Assembly in such case made and provided.

A. C. HANSON.

Recorded the 31st March, 1788.

MARYLAND, *Sct:*

I, George Earle, Clerk of the Court of Appeals of the State of Maryland, do hereby certify that the aforegoing is a full and true copy taken from Liber "I. E., No. A," folio 234, &c., one of the Land Records of the late General Court for the State of Maryland, deposited in and belonging to the office of the Court of Appeals of said State.

SEAL

In testimony whereof I have hereunto set my hand as Clerk, and affixed the seal of the Court of Appeals of Maryland, this 30th day of March, A. D. 1864.

GEORGE EARLE,
Clerk of the Court of Appeals of Md."

The plaintiff objected to the admissibility of this deed, unless the plat therein referred to in the words italicised, should be produced or its loss shown, and the Court having nevertheless admitted it, subject to the right of the plaintiff to move to exclude it at the close of the testimony, if not legally and sufficiently applied by the defendants to the maintenance of the issue on their part, the plaintiff made such admission the subject of her first exception, (p. 4.)

The deed thus objected to gives the title, the existence of which this Court presumed in favor of the plaintiff, (5 Wal-

lace, p. 805,) from a recital and warranty in the deed of Philip Barton Key to Arthur Bryan, produced by the plaintiff herself on the first trial.

The defendants then produced a deed from Mrs. Elizabeth Chew to Thomas M. Foreman, in fee, (pp. 5 and 6,) dated March 25th, 1796, to the admission of which in evidence the plaintiff made her second exception, (p. 8,) "because of the uncertainty of description" and alleged defective acknowledgment, certificate and record. The description alleged to be uncertain is the following, (p. 6:) "*all that moiety of a tract of land, called Kent Fort Manor, which forms the southern extremity of Kent Island, in Queen Anne's County, in the State aforesaid, which said moiety the said Elizabeth purchased of her son, Samuel L. Chew, devisee of Samuel Chew, late* of Queen Anne's County aforesaid, deceased."

Defendants followed this up, by producing, *inter alia*, a deed from Thomas M. Foreman, (p. 9,) with warranty of title in fee, to Philip Barton Key, and under date of January 10th, 1798, of "all that moiety or half part of Kent Fort Manor lying on Kent Island, in Queen Anne's County, being the lower half part or moiety of Kent Fort Manor, and is the land of which Mrs. Chew was heretofore seized in fee simple, supposed to contain eleven hundred acres of land, clear of all incumbrances, more or less." The deed of Key, already referred to, dated March 17th, 1798, was next produced, (p. 11,) conveying, with warranty, to Arthur Bryan, in fee, "all that moiety or half part of Kent Fort Manor, on Kent Island, in Queen Anne's County, being the lowermost half part of the said tract of land called Kent Fort Manor, and is the same land and half part of which Mrs. Chew was heretofore seized, and supposed to contain 1100 acres, more or less."

This deed, defendants proved, (top p. 36,) had been produced and offered to the Court on the former trial by plaintiff, to maintain the issues on her part joined, and for the purposes set forth in the record of that trial. Those purposes, as announced by plaintiff, (p. 21 of the old record,) were "further to maintain the issue and *to derive title* in his lessor and for the purpose of laying

a foundation for the admission of the deed from Eleanor Brent to Samuel Chew"—the ancient deed hereinbefore alluded to. Then followed, in evidence, the deed of April 9th, 1822, (p. 12,) from the plaintiff's mother and aunt to Samuel A. Chew, of all their interest in Kent Fort Manor, being the deed passed upon and declared valid previously by this Court. Next, was a confirmatory deed of the same parties, (p. 14,) to Samuel A. Chew, of Long Point, part of the upper half of the Manor, dated March 28th, 1829; a deed from Samuel A. Chew to Thomas Murphy of Long Point, dated 6th March, 1830; another, from the same, of Green's Creek Farm, part of the upper half of the Manor, to James Bright, Jr., under date of January 4th, 1840. These last two deeds covered and excluded from dispute the land for which defence was taken by the defendants, Bright, Legg and Tanner. (P. 36, and defendants' 2d prayer, p. 44, assented to by plaintiff, p. 45.)

The remaining portion of the upper half of the Manor was never parted with by Samuel A. Chew, but descended to his son, Lowman Chew, at whose death it passed to his heirs-at-law, (represented as to that tract, in this controversy, by the defendant Lane.) Hence the disclaimer of the plaintiff of any cause of action against Lane, (p. 45, last paragraph, and Bright's testimony, p. 36.) This state of the proof left admittedly nothing in controversy, except the lower or southern half of the Manor, claimed and held by Mrs. Cray, whose co-defendants, Palmer and Goodhand, were merely her tenants. The evidence as thus far stated, passed the title to this lower part, from the Chew family, through Foreman and Key to Arthur Bryan, and it is admitted, by the agreement of counsel hereinbefore set forth, that at the death of Bryan it was assigned, in 1802, by the Court of Chancery of Maryland, to his sister, Susanna Tate, in the partition of his real estate. The plat or map of Kent Fort Manor, showing its location as "Susanna Tate's moiety," was given in evidence, at the late trial, by the plaintiff herself, subject to the terms of the agreement in question. The defendants proved by

Bright, (pp. 36 and 37,) and Godwin, (pp. 38 and 39,) that Robt. Tate, Sr., the husband of Susanna, occupied the said Southern half during his life, and that the possession then passed to his son, Robert Tate, Jr., then to Dr. Cray, and then to Cray's widow, the present defendant. A great deal of evidence was further given by the defendants, (pp. 36 to 41,) through aged men, to show that there had been from their earliest recollection of the premises, a division fence between the Southern half of the Manor and the other or upper portion. Upon examining the plat filed in the Court of Chancery, in the proceeding for the division of the real estate of Arthur Bryan, and produced by the plaintiff in evidence, (p. 3,) they agreed, in the main, in testifying that the present division line is longer and inclines further to the south than that which appears on the plat; but it was proved, without contradiction, that the line of the present division fence had not been changed for forty years. (See testimony of Tanner, p. 38, Godwin, 37 and 40.) The testimony of Bright went back thirty years. The witness Godwin, a man of seventy-one years old, testified that he had known the Manor for sixty years, and that about forty years ago the old division line and fence had been changed and run a little further to the south by agreement between Samuel A. Chew and Tate, the then owner and occupant of the southern moiety of the Manor. The fence on the present line was then made the line or division fence, and has so continued to be till this day. The witness was Chew's overseer for a year, thirty-seven years before he testified, and worked, the year after, for Tate. Chew then talked with him as his overseer, pointed out said division fence as the boundary line between him and Tate, and told him that he and Tate had changed the line and made the present division line between them, (39 and 40.) Both Chew and Tate, he said, recognized it as the boundary line between them and cultivated up to it. The change made was in the course, not the beginning of the line.

In addition to this proof, the defendants offered to read from the bills of exceptions on the previous trial, to show, that at the said trial the plaintiff had proven by Governor Grason, a very aged gentleman, "that Samuel A. Chew had told the witness that the division fence between him and Robt. A. Tate, who was then in possession of the Southern half of the land in dispute, had been altered for his (Chew's) accommodation and that south of that line was Tate's land." The defendants proved that Gov'r Grason was too infirm and ill to attend personally and testify. But the plaintiff objected and the Court refused to allow the evidence to be read, because the statement in question had been made by the witness on cross-examination and not on his examination in chief, (see p. 40.) Gov. Grason's testimony is on page 20 of the former record, being part of plaintiff's second exception. The defendants reserved an exception to the Court's ruling, (p. 40.)

The defendants further produced in evidence the deed from plaintiff's mother and aunt in 1822 to Samuel A. Chew, of all their interest in Kent Fort Manor (p. 12), and the deeds of Chew to Bright & Murphy (15 to 19), subsequently disposing to them of the lands claimed in this case by Bright, Legg & Tanner, in whose favor a verdict by consent was accordingly rendered as has already been stated.

It is of importance to add that the whole tract of Kent Fort Manor, though patented as "by estimation" containing one thousand acres, more or less, was described in the deed of the Brents to the elder Chew in 1785 as containing "by estimation, two thousand one hundred and fifty acres more or less." In the deed from Samuel L. Chew the younger to his mother, in 1787, there is no enumeration of acres, the description being of "all that moiety or half part of a tract of land called Kent Fort Manor, lying and being on Kent Island, in Queen Anne's county, being all that part of said tract of land which lies to the southwestward of a line beginning on North West Creek and running an easterly course, agreeable to the plat of said land made by Wil-

liam Brown of Anne Arundel county, in such manner as to comprehend one-half of the number of acres of the whole lot, the said line to be run under the direction of John Thomas, Esquire of Anne Arundel county."

This would give to the grantee one thousand and twenty-five acres, following the estimation of the Brent deed. The deed from Forman to Key, p. 9, describes the same moiety as supposed to contain eleven hundred acres, more or less, and the same description is followed by the deed from Key to Bryan, (p. 11.) The surveyor puts the quantity at one thousand and two acres and a half, on the plat of the Court of Chancery already referred to, thus—"Susanna Tate's moiety 1002½ acres." The oral testimony shows that of the three farms comprising the upper or northern half of the manor, Bright's contains 241 acres, Murphy's 400 acres, Samuel A. Chew's (which passed to his son Lowman, the plaintiff's intestate) 400, being 1041 acres in all (Bright, top of p. 38) which, added to the 1002½ acres of the lower moiety would make the original tract 2043½ acres in all. The testimony of Godwin shows that when Tate & Chew changed the course of their division line forty years ago, some land was taken off from Tate (p. 39, near the middle.)

The defendants further gave in evidence a deed of mortgage for $1,000, from the plaintiffs to Otho Scott (p. 41) of "all her undivided interest in a tract of land lying in Queen Anne's county, and containing six hundred acres, more or less, *being the same land and all the lands of which Lowman A. Chew, a lunatic, died seized*, the said Eliza being one of the heirs of said Chew." This mortgage was executed on February 7th, 1863, ten months before the institution of this suit (October 12th, 1863,) and contains no provision for possession by the mortgagor till default. There was also exhibited in proof by the defendants, a certified copy of a mortgage from the plaintiff to John M. Robinson, (p. 20,) dated December 15th, 1864, for $300, of "all the undivided right, title and interest of the said Eliza C. Deery, in and to that tract or parcel of land, being part of Kent Fort Manor, situate

on Kent Island, in Queen Anne's county, and State of Maryland, and containing four hundred acres, more or less, being the tract of land which Lowman A. Chew died seized." This mortgage is also without any covenant for the continuing possession of the mortgagor till default.

Then followed (p. 21) the record of an equity proceeding in the Circuit Court of Queen Anne's county, instituted October 17th, 1864, by the plaintiff and others, heirs-at-law of Lowman Chew, for the sale of the real estate of which said Lowman Chew died seized, in said county, and a distribution of the proceeds. In the bill it is recited (p. 22) that Eliza C. Deery (the plaintiff here in error) had brought suit "in the *District* Court of the United States for the State of Maryland," "for the purpose of ascertaining the respective interests of the said heirs of Lowman Chew in the aforesaid real estate." A decree was passed (by consent, p. 24) for the sale of the real estate mentioned in the proceedings. The trustee, in due course, reported that he had accordingly offered for sale certain real estate mentioned in the decree, after having advertised it, &c., and, finally, did sell "all that tract or parcel of land called Kent Fort Manor, containing four hundred acres, one rood and ten perches," for $10,848.49. The executors of Otho Scott, deceased, then filed their mortgage claim, (28, 29,) under the mortgage above referred to, and prayed that it be satisfied out of Eliza C. Deery's (the plaintiff) share (p. 29.) The auditor rendered an account, allowing to Scott's executors his mortgage debt of $2,029.21, and John M. Robinson his mortgage debt of $300, with interest, out of Eliza C. Deery's (the plaintiff) share of the proceeds, which account was finally ratified by the Court by consent of all parties (p. 35.)

After all this evidence was in, the plaintiff offered, as rebutting proof, the evidence of Miss Deery herself, to the effect that, in the year 1840, Samuel A. Chew, then living on the Chew farm of four hundred acres, of which he and his son Lowman after him, died seized and possessed, told her (the plaintiff) that "the whole of Kent Fort Manor belonged to the heirs of Sam-

uel L. Chew, his father, if they had their rights." The Court, upon the defendant's objection, allowed the said declarations to go to the jury to qualify or explain Samuel A. Chew's possession of or title to that part of Kent Fort Manor which he had in actual possession when he made the declarations, but excluded said declarations so far as they tended to show his claim to the whole Manor. To this ruling, the plaintiff excepted, and framed her third exception accordingly.

Prayers were then presented on both sides. The plaintiff prayed—

1. To the effect that she had shown a *prima facie* title to herself in an undivided one-fifth part of the residue of Kent Fort Manor, after deducting the farms conveyed by Samuel A. Chew to Murphy & Bright, and the tract sold by John M. Robinson as trustee in the chancery proceedings shown (p. 42.)

2. That there was no legal evidence of the location or running of the line described in the deed from Samuel L. to Elizabeth Chew; that said deed was, therefore, inoperative to convey any portion of Kent Fort Manor, and that the jury could not presume any valid legal conveyance from Samuel L. Chew to said Elizabeth or her grantees, if they should find that the possession of the Southern part of the Manor was and is still held and claimed under said deed from Samuel L. Chew to Elizabeth Chew, and the conveyances from her read in evidence, (p. 42.)

3. That if the jury could not find from the evidence by whom or when the straight fence across the Island was erected, but that the same was on the line of partition as allotted to Mrs. Tate in 1802, and that there was another fence, equally ancient, starting at or near the same point and reaching the water on the eastern side at a point south of the straight fence, then there was no sufficient legal evidence that either of said fences was on the line called for or meant to be described in the deed from Samuel L. to Elizabeth Chew, and the jury could not find the true location of said line or give the deed any effect or operation as a legal conveyance, (p. 42.)

4. That the evidence of enclosure and possession recited in the 4th prayer of plaintiff, did not establish a sufficient enclosure to constitute an adverse possession for twenty years, (p. 43.)

5. That the jury must find that the plaintiff was entitled to recover an undivided fifth part of the half acre used as a grave-yard, and excepted in the deed from Samuel L. to Elizabeth Chew, and that if they found Mrs. Cray to be in the possession of it, they must find a verdict against her for said fifth part, (p. 43.)

6. That if the existing fence across the Island was removed to its present site more than forty years ago, and there was prior to that time no fence on said site, then there is no sufficient legal evidence that said fence is now standing on the line referred to in the deed from Samuel L. to Elizabeth Chew, and said deed cannot be supported by reason of the existence of said fence, (p. 43.)

7. That if the said fence was established between Samuel A. Chew and Robert Tate, Jr., for their mutual convenience, and to save a longer line of fence, and not as and for the location of the line called for in the deed from Samuel L. to Elizabeth Chew, then the erection of the fence was no sufficient evidence of the location line in the deed, (p. 44.)

The defendants's prayers were to the effect:

1. That plaintiff could claim no title to any of Kent Fort Manor, except as heir at law of Lowman Chew, (p. 44.)

This was conceded by the plaintiff, (p. 45.)

2. That Lowman Chew had no interest in the Manor, except what he had derived from his father, Samuel A. Chew, and that, under the conveyances of the latter to Bright and Murphy, the defendants Bright, Legg and Tanner, were entitled to a verdict, (p. 44.)

This also was conceded by the plaintiff, (p. 45.)

3. That Mrs. Cray and her tenants, Palmer and Goodhand, were entitled to the benefit of the deed from Samuel L. Chew to Elizabeth Chew, and to a verdict in this case, if the jury should

find that during the life of said Samuel L. Chew, or after his son Samuel A. Chew acquired the interest of his sisters in the tract in 1821, and before his death, and more than twenty years before suit brought, a division line or fence or boundary between the upper and lower moieties of the tract was established by the common consent, or with the common acquiescence of Samuel L. Chew, or Samuel A. Chew and Elizabeth Chew, or those claiming under her, and that said line, fence, or boundary was so established and recognized by and between the parties as and for the upper line of the lands intended to be conveyed to said Elizabeth, by Samuel A. Chew, and had thenceforward and for more than twenty years before suit brought so continued to be, and that possession had ever since been continuously held by the parties possessing and claiming title on both sides of the line in recognition of and in conformity with said decision.

4. That if the defendants Cray, Goodhand, Palmer, and those they claim under had held the lower moiety of Kent Fort Manor, for which they had taken defence, by continuous, exclusive and adversary user and possession with enclosure under claim of title according to its present boundaries for more than twenty years prior to suit and from a date prior to Samuel A. Chew's death, they were entitled to a verdict.

5. That by the execution of the mortgage to Scott, the plaintiff, had parted with her legal title, if any, to the real estate on Kent Island, whereof Lowman Chew died seized, (p. 45.)

6. That the evidence in the case, if believed by the jury, was legally competent to justify the jury in finding, if they should think proper, that the line called for by the deed from Samuel L. Chew to Elizabeth Chew, to be run and ascertained by Thomas, was actually run and ascertained by him. (P. 45.)

7. That (apart from other reasons) the plaintiff was not entitled to recover, because, by her mortgages to Scott and Robinson, and the proceedings in Queen Anne's County Circuit Court, she had not at the time of suit or trial, the legal title to the real estate whereof Lowman Chew died seized. (P. 45.)

The Court rejected all the plaintiff's prayers and the defendants' seventh prayer, but granted all the rest of defendants' prayers, the first and second by consent, as have already been stated. (P. 45.)

To this action of the Court, the plaintiff took her fourth exception. (P. 45.)

PROPOSITIONS OF THE DEFENDANTS IN ERROR.

I. The defendants pleaded severally and took defence severally, on warrant of re-survey under the Maryland practice. After the agreement of counsel, given above, by which the necessity of re-survey was waived, they severally took defence for their respective and several claims and possessions. The defence of the claimants of the Southern moiety of the land, was in these words:

DEERY'S LESSEE
vs.
BRIGHT, AND OTHERS.

CIRCUIT COURT, U. S., FOURTH CIRCUIT AND DISTRICT OF MARYLAND.

The defendants, Martha Cray, Thomas Palmer and James Goodhand, take defence for all that part of the lands in controversy, which lies to the south of the line across the whole tract which divides the southern moiety or half part of the entire tract from the northern moiety or half part of the entire tract.

TH. S. ALEXANDER,
S. T. WALLIS,
For Def'ts, Martha Cray, Thos. Palmer and Jas. Goodhand.

See p. 7 of the record in the former case in this Court. The defences of the other parties were taken in like form, and the

proofs, as well as the admissions of the plaintiff in error, show, that the claims and possession of the defendants were altogether several, of distinct tracts, under different titles and in wholly distinct rights. Under the rulings of this Court, therefore, the action was improperly brought against the defendants jointly, for "in the action of ejectment a plaintiff will not be allowed to join in one suit several and distinct parcels, tenements and tracts of land, in possession of several defendants, each claiming for himself."

Grier vs. Mezes, et al., 24 Howard, 277.

"Every defendant," says the same case, "has a right to take defence specially for such portion of the land as he claims, and by so doing he necessarily disclaims any title to the residue of the land described in the declaration, and if, on the trial, he succeeds in establishing his title to so much as he has taken defence for and in showing that he was not in possession of any of the remainder disclaimed, he will be entitled to a verdict." (Id. Ib.)

The defendants, Bright, Legg and Tanner, coming within the precise circumstances thus defined, and it having been admitted by the plaintiff, as has been stated, that they were by reason thereof entitled to the verdict rendered, (p. 45,) they have been improperly brought before this Court by the writ of error, and the entire writ itself is as irregular as the original action, and ought not to be allowed.

II. The Court was manifestly right in the decision assailed by the first exception (p. 4), for even if the deed from Sam'l L. Chew to his mother had been ultimately inadmissible, the Court had the right to afford the defendants an opportunity of applying it to the issue by subsequent proof and the right of the plaintiff to move to exclude it thereafter being reserved, no harm was done to her. The action of the Court, clearly sustainable on principle and without any special rule, is specifically autho-

rized by its Rule 87, to be found on p. 15 of the former record, and of which the following are the applicable words.

"If any evidence should be objected to, the Court will, in their discretion. hear and decide the objection when made, or will direct the trial to go on until the residue of the case is before the Court and jury, and then the Court will consider the objection and decide thereon."

In every event, the 1st exception is of no moment, as the point of it is presented by the prayers.

III. For the reason last given, the 2d exception is equally unimportant, so far as it relies on the uncertainty of the description in the deed from Elizabeth Chew to Foreman, (p. 8) which rests on the deed from Samuel L. to Elizabeth Chew and can be made certain by reference thereto.

The objections to the acknowledgment, record and certificate attached to the deed were not pressed or stated distinctly below.

The deed was executed March 25, 1796. Although, at that time, under the Acts of the General Assembly of Maryland of 1715, ch. 47, sec. 8, and 1766, ch. 14, sec. 2, deeds were generally required to be executed before a judge of the Provincial Court or two justices of the County Court where the land lay; these Acts contained loose language to the effect that where grantors "shall live remote" from the county where the land lay it should be lawful for them to acknowledge the same "in the county where such bargainors live," and before "two justices." It appears that many deeds had been acknowledged under this language before justices of the peace, instead of justices of the County Court; for the Act of 1807, ch. 52, entitled "An Act for quieting possession and securing and confirming the estates of purchasers" provides, by its 2d section, that all deeds "heretofore made and acknowledged before two justices of the peace for any county of this state in which the acknowledgment is made" shall be as valid as if acknowledged before the judges of the County Courts, provided they had otherwise been acknowledged

and recorded according to law. And the preamble to the Act recites, as one of the reasons for passing it, that "doubts are entertained whether deeds acknowledged before two justices of the peace who were not justices of the County Court are valid—" which doubts the Act was passed and was supposed to put at rest. Even if it were otherwise, the Confirmatory Act of 1858, ch. 208, would of itself cure any such defect as is alleged.

Enrolment of writings required to be recorded, is *primâ facie* evidence of all things necessary to give them validity.

Crawford vs. State, 6 H. & J., 231.
McCauley vs. State, 21 Md., 566.

The form of the acknowledgment and of the certificate thereof is perfect, under the Act of 1797, ch. 103.

The point of the objection to the recording of the deed in the General Court is not perceived, for by the Acts of 1715, ch. 47, sec. 8, and 1766, ch. 14, sec. 2, deeds acknowledged as therein provided, may be recorded in the Provincial Court, for which the General Court was, in all respects, substituted by the Maryland Constitution of 1776, Art. 56. (See also Act of 1785, ch. 9, sec. 4.) The Act of 1807 having made acknowledgments before two Justices of the Peace of the grantor's county, as has been shown, as valid as the acknowledgments required by the Acts of 1715, 1766, and 1785, provided the instruments had been recorded "agreeably to the laws heretofore made on the subject," there can be no reason for questioning the propriety of a record in one of the places by those laws designated. The objection, "because the clerk's certificate was defective," is not intelligible, inasmuch as there are two clerk's certificates to the deed. If that of the Clerk of Washington county be meant, the ground of objection is not apparent to the counsel of the defendants in error. If that of the Clerk of the Court of Appeals be referred to, it is equally unobjectionable. By the Act of 1805, ch. 65, sec. 18, all the records of the General Court, which was abolished by that Act, were transferred to the Clerk's offices

of the Court of Appeals on the Eastern and Western Shores respectively, and those Clerks were authorized to give authenticated copies of them, as the Clerk of the General Court might have given. Upon the suppression of the office of the Court of Appeals on the Eastern Shore, by the Constitution of 1851, Art. IV, sec. 16, all the records of that office passed to that of the Court of Appeals at Annapolis, and all the existing laws applicable to the Clerks of the Court of Appeals, were made to apply to the Clerk of that Court. The Constitutions of 1864 and 1867 have not interfered with, but have continued the system of 1851 in the particular named.

IV. The point taken by the third exception will hardly, it is presumed, be urged. For the plaintiff, to be allowed to establish her case, in whole or in part, by proof that Samuel A. Chew, her predecessor in the title claimed, had privately told her, in 1840, that "the whole of Kent Fort Manor belonged to the heirs of Samuel L Chew, his father, if they had their rights," would certainly require the establishment of some new principles of evidence. When the alleged declaration was made, Chew himself had already, ten years before, (p. 15,) conveyed four hundred and sixty-one and a quarter acres of the very Manor in question to Murphy, and in January, 1840, he conveyed two hundred and forty-four and three-quarters (p. 18) to Bright, who had bought it in 1839 (p. 36.) He had never occupied any portion of the Manor except the farm of which he died possessed and was possessed when the alleged conversation took place. When he took possession of that farm, all was a sedge-field and a common, North of Tate's place, (the Southern moiety,) which had long before, in 1802, been assigned to Mrs. Tate, and was then occupied by her husband or son, and Chew had never, directly or indirectly, occupied a foot of land of that moiety, or claimed it of those who occupied it (p. 39.) It is simply impossible that his declarations in 1840 could give, or aid in giving title to any one claiming under him, as against his own grantees and the grantees of his father. Indeed, the declaration

itself was not a claim of title, nor an assertion that the Manor did belong to his father's heirs, but that it would, "if they had their rights." The Court, in allowing such a declaration to be given to the jury to qualify or explain his possession of the farm he was occupying, certainly did not fall short of what the plaintiff had a right to ask.

Declarations of an ancestor may be given in evidence against his descendants, and, in some cases, declarations as to boundary may be proven in their favor where it appears that the ancestor, at the time, had no interest in making them, but declarations of an ancestor, favoring his own interest and extending the limits of his possession, are no more admissible, on behalf of his descendants, than on his own behalf in his lifetime.

Dorsey vs. Dorsey, 3 H. & J, 427.
Hall vs. Gittings, 2 H. & J., 121.
Shepherd vs. Thompson, 4 New H., 213.
Smith vs. Powers, 15 New H., 563.
Rice vs. Cunningham, 29 Cal., 492.
Ware vs. Brookhouse, 7 Gray, 454.

Dorsey on Evid. 58

V. These views appear to dispose of the plaintiff's exceptions apart from the prayers. Of the plaintiff's prayers, the first, second, third and sixth depend upon the point principally relied on by the plaintiff below, viz: the effect of the alleged uncertainty of description in the deed from Samuel L. Chew, Jr., to Elizabeth Chew. The third and sixth prayers of the defendants are directly antagonistic to those of the plaintiff just referred to, upon this point, and will be considered with them.

The proposition of the plaintiff is, that the deed from Samuel L. to Elizabeth Chew is void for uncertainty, by reason that the beginning of the Northern line is not fixed, and the plat referred to is not produced. No parol proof, it is contended, can help this deed, which is to be treated as an absolute nullity.

This proposition, it is submitted, rests on a misapprehension of the terms and purport of the deed. That describes the quan-

tity of land intended to be conveyed, in language perfectly clear, *i. e.*, "one half of the number of acres of the whole tract." It does not leave to Mr. Thomas to designate the point from which the Northern line is to start, or the course it is to run. Both of these are to be in conformity with—"agreeable to"—a plat already made and referred to. Thomas is to have only the practical running and ascertainment of this existing line, not the fixing or establishment of a future boundary, with a beginning and a line to be by him, for the first time, established. The deed is, therefore, not uncertain, because it is with the plat, made absolutely certain.

But if the plaintiff's interpretation were right, the proposition stated would still be outside of both principle and authority.

The deed in question was made for a large moneyed consideration, on its face, and contains a covenant of special warranty against the grantor and those claiming under him. The grantee was already tenant for life, under her husband's will, of the whole tract. By a release, dated March 15th, 1794, from Chas. Carroll, of Carrollton, produced by the defendants, (p. 8,) it appears that Samuel L. Chew, on the 28th of October, 1786, the year before the conveyance to his mother, had mortgaged the Manor to Carroll, to secure payment of £7000, with interest. The release recites that Chew had subsequently conveyed part of the mortgaged premises, being part of the Manor, to Elizabeth Chew, who assumed payment of £3,500, part of Samuel L. Chew's mortgage debt, and had mortgaged the last mentioned part of the Manor to Carroll, on October 22d, 1787, the day of the date of the deed here in controversy. The release then, after other recitals, releases the originally mortgaged premises to Chew, reserving Carroll's right, as to "such parts of the said premises so mortgaged, that hath since been conveyed to the said Elizabeth Chew or mortgaged by her to the said Charles Carroll." (p. 9.) This release was delivered to and recorded by Chew, so that between six and seven years after the execution of the deed in controversy, he recognized and adopted its

validity and the validity of the mortgage by his mother to Carroll of the property she derived under it. On April 27th, 1797, Carroll released this mortgage to Mrs. Chew, and in the release, produced by the defendants, (pp. 4 and 5,) the property is described as "one moiety or half part of all that tract or parcel of land called Kent Fort Manor, the said moiety or half part being the southernmost extremity of Kent Island." Samuel L. Chew lived until 1796 or 1797. His mother survived him until about 1807. (p. 4.) Samuel A. Chew, does not appear from the proof to have ever been upon the premises, or to have had actual occupation of any of them till 1825 to 1830, (Godwin, p. 39,) and when he went there he took possession of and put in cultivation only the farm of which he and his son Lowman died seized and possessed. Over that farm and the farms conveyed to Murphy and Bright, only, did he ever claim or exercise ownership; these three farms, by metes, bounds description and possession comprehending the Northern moiety of the Island. The present plaintiff herself, in the equity proceedings in evidence to which she was a party, recognized the quantity of land contained in the farm of which Lowman Chew died seized, as amounting to 400 acres, 1 rood and 10 perches. Adding to this the quantity contained in the farms of Murphy and Bright, as given in the deeds thereof, there is an absolute recognition of the remaining estate, constituting the Southern moiety, with every element for its location, courses, distances and contents, Lowman Chew's seisin being of course capable of positive establishment. This recognition is of record and by the plaintiff herself as well as her predecessors in title. To say, under such circumstances, that she, bound by her grandfather's warranty, is still capable in law of setting up the nullity of his deed to Mrs. Chew, and recovering a share of the property conveyed by it, because of its uncertainty; and that neither Mrs. Chew, nor those claiming and holding under her, for more than eighty years, ever took or held any title under it, is, to say the least, an extreme proposition.

There is undoubtedly a class of cases is Maryland (and the Maryland law, in this regard, is not peculiar) in which it is held that a deed is void for uncertainty when it does not give a description of the property conveyed, sufficiently certain to enable it to be laid out and located upon a plat, or does not furnish the means or references by which such uncertainty may be made certain. These may be illustrated by the case of

Hammond vs. Norris, 2 Har. & Johns., 146, 7,

There, there was no description at all, and the deed referred to therefor in the principal deed could not be found. "There is nothing in it," says the Court, "by which any locatable land can be conveyed."

See also, *ad idem*, Blessing vs. Harris, Lessee, 3 Gill & Johns., 290.

Thomas vs. Turvey, 1 Harris & Gill, 438.

Wilson vs. Inloes, 6 Gill, 164, 5.

So there are cases in which it is laid down that if a party produces a deed which is insufficient, he cannot ask the jury to presume a sufficient one, though such would have been presumed if he had produced none.

Owings vs. Norwood, Lessee, 2 H. & Johns., 96.

Beall vs. Lynn, 6 H. & Johnson, 336.

And there are of course, many cases, every where, to show that parol evidence cannot be adduced to remove an ambiguity patent on a deed, or to supply a valid title where none appears.

But none of these rulings touch this case. It is not a case of patent ambiguity, for the deed distinctly describes and conveys the property intended to be conveyed, as the southern half of Kent Fort Manor, containing one-half of the number of acres of the whole tract, and with designated boundaries, one only to be ascertained and run. There is no attempt to explain the language of the deed or supply new matter. No presumption of any other

or better deed is sought to be raised. The deed looks to the running and ascertaining of a single boundary line, the tract being otherwise surrounded by water. It is almost identical in its description and location (for the purposes of the principle involved) with the language of the original patent under which all the parties claim, which is as follows: "all that neck of land lying nearest together about Kent Fort, in the said Isle of Kent, bounding upon the west, east, and south with Chesapeake Bay, upon the north *with a line drawn through the woods straight east from the northeastermost branch of the creek called Northwest Creek unto a swamp in the said bay, on the east side of the said neck*, containing by estimation and now set forth for one thousand acres, be it more or less." (See record in previous case, p. 3.) "A line drawn through the woods from the N. Eastermost branch of the creek called N. W. Creek unto a swamp, &c." is not much more definite as to beginning than "a line beginning on N. W. Creek and running an E. course, &c." Was the patent void? Hardly. In both cases, a thing *in paiz* was to be done after the grant—in the one case by direction of the deed, in the other from necessity —and there can be no rule of evidence which precludes showing, by direct proof or circumstances satisfactory to the jury that it was done, or that something was done in its stead by arrangement of the parties interested.

Blake vs. Doherty, 5 Wheaton, 359.
Reed vs. Proprietors, &c. 8 Howard, 289, 90.
Noonan vs. Lee, 2 Black., 504.

There is no rule more fully settled than that it is competent to show, by parol, that a boundary line has been fixed by parties, and to identify, in the same manner, the lands referred to in a written instrument. Such proof does not go to contradict, alter, add to or detract from the writing, but only to explain the same, by giving locality and identity to the subject-matter and applying the contract. As often as writings fail to describe, by metes and bounds, the lands conveyed, or to give a

precise location to them, the omission is always supplied, and the application of the writing made to the lands by parol. *Per*

Bertsch vs. Lehigh Co., 4 Rawle, 139.
McCaleb vs. Pradat, 25 Mississippi, 267.
Cries vs. Withers, 26 Maryland, 569.
Dorsey vs. Eagle, 7 Gill & J., 331.

Crafts v Hibbard 4 Metcalf 452

And any parol arrangement proven, sustained by twenty years possession, is conclusive in ejectment as to boundary.

Boyd's Lessee vs. Graves, 4 Wheat. 513.
7 Wendell, 170, 172.

And see also,

Munroe vs. Gates, 48 Maine, 463.
Russell vs. Marks, 3 Metc., (Ky.,) 37.

Allen v Bates 6 Pick. 460.

Boundaries may not only be established by hearsay,

Boardman vs. Reed's Lessee, 6 Peters, 341.

But in opposition to the calls of an ancient patent.

Conn vs. Penn, Peters C. C. Rep., 496.

The evidence in the present case is conclusive as to the existence, in fact, of a Northern boundary to the Southern moiety, as far back as the memory of the oldest witness (Godwin) goes, a period of sixty years before the trial in 1868. Tate, the husband of Susanna Tate, (who received title in 1802,) then held the Southern moiety, and cultivated up to the then boundary, which was a little north of the present one, all the tract north of that boundary being then a waste. The present boundary was fixed by agreement between Tate, the younger, and Samuel A. Chew, about forty years before the trial, (say in 1828) and was shown never to have been altered since. (Godwin, 38, 39, 40.) These facts were put to the jury by defendants' third and sixth prayers.

VI. The fourth prayer of defendants, (p. 45,) claiming a verdict on the ground of continuous adversary possession with enclosure for more than twenty years, and from a date prior to the death of Samuel A. Chew, (who died about 1842,) was met by plaintiff's fourth prayer, which asked an instruction that certain facts therein recited did not constitute a sufficient enclosure.

The facts recited are an exaggeration of the facts proven, (by Bright, p. 37,) and are not supported by the evidence, but they amount to saying that the enclosure was not complete, because the gate in the boundary fence was not kept locked, and the cattle could sometimes get around the ends of the water fence, on one side of it, at low tides, when, by ice or otherwise, the said water fence was temporarily carried away.

There is believed to be no authority for such a position, (especially where the possession was not a mere trespass, but under claim of title,) even if the Code of Maryland (Vol. I, Art. LXXV, sec. 52, p. 528,) did not now provide that actual enclosure need not be proven, and that possession may be proven by acts of exclusive user and ownership.

See Warner vs. Hardy, 6 Md., 539.
Casey vs. Inloes, 1 Gill., 500.
Thistle vs. Frostburg Co., 10 Md., 145.

It was likewise argued below that a title by possession could not be set up where a paper title, found bad, had been relied on.

See Colvin vs. Warford, 20 Md., 395.

A good deed would not of course be presumed from possession, where the possession had been under a bad one. But this cannot apply to a case where the defect is not in title but consists in an uncertain boundary, to be made certain afterwards There the possession itself establishes the certainty required, and instead of being referred to another and presumed deed goes back to and stands upon the very deed propounded, whose deficiency it supplies, and with which it is consistent.

VII. Plaintiff's 1st prayer was calculated to mislead the jury. At the close of the case, an instruction that the plaintiff had made out a *prima facie* case would have been improper. The business of the jury was with the whole case, and the plaintiff had made out no case at all, if the jury found the other facts proven and which the prayer of course assumed to be true.

VIII. Plaintiff's fifth prayer was wholly unsustained by proof that the graveyard was in Mrs. Cray's possession. It is not alluded to once in the testimony.

IX. There is no proof of the facts assumed by the plaintiff's 7th prayer.

X. Defendants' 5th prayer, as to the effect of the plaintiff's mortgage to Scott, was properly granted.

By the mortgage to Scott, plaintiff had deprived herself of the legal and possessory title, before this suit was brought, to "all the lands of which Lowman Chew, a lunatic, died seized," and she mortgaged her equity of redemption to Robinson pending this suit.

No right of possession had returned to her when the trial took place. She could not therefore, maintain ejectment, which requires a legal possessory title at the time of demise and the time of trial.

Lannay vs. Wilson, 30 Md., 546.
Jameson vs. Bruce, 6 Gill & J., 74.
Evans vs. Merriken, 8 G. & J., 46.
Smith's Lessee vs. McCann, 24 How., 403.
Cresap's Lessee vs. Hutson, 9 Gill, 269.

The mortgage was proved by a certified copy from the enrolment, and its admission left the fact of enrolment no longer open for the jury.

As to the residue of the land, (if any,) of which Lowman Chew died seized, and which was not sold by the Trustee in Chancery, including all the interest of the plaintiff (if any) in the lands in controversy, it passed in title and possession to the Chancery Court by the decree and is in the Court still.

Tessier vs. Wyse, 3 Bland's Ch'y R., 60.
Wagner vs. Cohen, 6 Gill, 103.
Lannay vs. Wilson, 30 Md., 550.

XI. The Court below should have admitted Governor Grason's testimony (ante pp. 11 and 12.) That the particular portion of it in question came out under cross-examination, made no difference. It was given in the same case, between the same parties, the witness being the plaintiff's, and he being physically unable to be present and testify. Story on Evid. 59.
Howard v. Moale 2 H. & J. 372
Roper v. Radcliff 2 Pick & Johns. 60

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For Defendants in Error.